# The Solicitors' Journal

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## Current Topics.

### Law Officers and Knighthood.

LAST week the new Solicitor-General, now Sir DONALD SOMERVELL, received the honour of knighthood. This is in accordance with a custom that may be said to have hardened into a rule almost as inflexible as that of the laws of the Medes and Persians. To GEORGE III, it is said, we owe the rule which requires each new appointee to the office to receive the accolade. When JOHN SCOTT, who is better remembered by the title he took on his promotion to the Woolsack, namely, Lord ELDON, was appointed Solicitor-General, we are told that he modestly wished to avoid knighthood, but the King laid down a rule which has been adhered to ever since, that the Attorney and Solicitor-General, and the judges, if not "honourable" by birth, should be knighted—"to keep up the reputation of the ancient order of Knights-bachelor"—and the ceremony, added the monarch, ought to be cheerfully undergone by them as an accompaniment of professional promotion. On the same occasion that SCOTT received the honour of being called "Sir John," his predecessor in the office, ARCHIBALD MACDONALD, then promoted Attorney-General, who till then had remained "plain Archy," also knelt and rose "Sir Archibald." Since that date all the holders of the office have had to "submit" to the honour, with the exception of those who, as pointed out above, were "honourable" by birth. Of these there appear to have been two only, SPENCER PERCEVAL and JAMES STUART WORTLEY, they being the sons of peers. PERCEVAL later became Attorney-General, and eventually Prime Minister, and had the tragic fate to be shot in the lobby of the House of Commons by a lunatic named BELLINGHAM.

### Felony and Misdemeanour.

ANOMALIES arising from the distinction between felony and misdemeanour have often been pointed out, and, if this distinction should not be entirely abolished, as some wish, it seems reasonably clear that the dividing line needs some replacement. In this connection, two recent prosecutions are of interest, and may be cited in illustration of the need for reform. In one, two lads being charged with stealing a fence, the superintendent of police concerned with the case asked to amend the charge to one of stealing timber. According to this authority "if you stole a fence it was not felony, but if the fence was blown over and then stolen it was a felony." The magistrates amended the charge, and, the lads pleading guilty, bound them over. The policeman's statement of law, in respect at least of a wooden fence, appears to be correct, if properly qualified. Theft of a metal fence is felony by virtue of s. 8 (1) (*c*) of the Larceny Act, 1916, but those who framed the Act apparently deemed that it was hardly worth while making the theft of a wooden fence a felony. By the common law it was only a misdemeanour to steal something attached to the land: see *Lee* v. *Risdon* (1816), 7 Taunt. 188 (p. 191), and the judgment of BLACKBURN, J., in *R.* v. *Townley* (1871), L.R. 1, C.C.R. 315. The theft of the fence after severance would, however, be felony under ss. 1 (3) (*a*) and 2 of the Act, if possession of it had been abandoned and retaken. Under these sections the theft of any portable thing of value is felony. *Primâ facie*, it would certainly seem a worse offence to take up and steal a fence firm in the ground than to appropriate it when blown over, for in the latter case the fence would be useless until replaced. The second example of the anomaly arose from the forcible detention by a private citizen of a man whom he found slashing the tyres of a motor-car. The latter had the hardihood to prosecute the citizen for assault, and, the offence of slashing a tyre being a misdemeanour only, and private individuals having no right to arrest and detain otherwise than for felony, conviction had to follow. The citizen's appeal to A.P.H.'s renowned K.B.D. will be found in 1933 "Punch" 402—a "Misleading Case" packed with much erudition. Why, however, does A.P.H.'s L.C.J. lay down that the private citizen *must* arrest for felony? This surely is considerably beyond the duty of aiding a constable as laid down in *R.* v. *Brown* (1841), Car. & M. 314, and *R.* v. *Sherlock* (1866), L.R. 1, C.C.R. 20. This L.C.J. might be challenged to cite a case where anyone has been prosecuted and convicted on the charge that, having witnessed a felony, he failed to arrest the felon. Modern motor-bandits arm a guard with an iron bar or threaten those who seek to interfere with them with fire-arms and the unarmed private citizen's duty to arrest them would certainly add a new terror to life.

### Small Holdings.

ACCORDING to the report on the work of the Land Division of the Ministry of Agriculture for 1932 (published 10th October), the regular decline in acreage of new land acquired by councils for small holdings and allotments since 1920 is disappointing in view of the activity in recent years in providing allotment gardens for the unemployed. The area acquired by local authorities for smallholdings in 1932 was 5,053 acres, as compared with 7,827 acres in 1931, and 8,347 acres in 1930. The total number of allotments in urban areas in England and Wales at the end of 1932 was 614,000, covering an area of 60,500 acres, as against 612,500 allotments, covering an area of 61,000 acres in 1930. The increase in the number of allotments probably indicated an increase in demand by unemployed persons, resulting in the letting of vacant allotments. There were 5,610 unsatisfied applicants for smallholdings at the end of 1931, and 109,478 acres were applied for. During the year 2,900 fresh applications for an area of 55,909 acres were received. The average price of land purchased was £157 per acre, as compared with £155 in 1930,

and the average rent for land leased was £3 10s. 3d. per acre, as against £3 7s. 7d. for land leased in 1930. The report states that the regular decline in acreage since 1920 seems to have been arrested in urban areas, and that there is ground for hope that the next returns will show a more marked improvement. It is during times of industrial depression more than at any other times that the provisions of the Small Holding and Allotments Acts, 1908 to 1925, can be applied with benefit by local authorities, and it is hoped that the statement in the report with regard to future returns has some solid basis and is not a mere pious aspiration.

### Broadcast Performances.

THE decision of Mr. Justice MAUGHAM in *Performing Right Society* v. *Hammond's Bradford Brewery Co. Ltd.* (77 SOL. J. 286), on which we commented in a previous issue (77 SOL. J. 241), has now been affirmed by the Court of Appeal (*Times*, 5th October). It will be remembered that the plaintiffs sought an injunction to restrain the defendants, their servants or agents, from the alleged infringement of the plaintiff's copyright by performing, or authorising the performance of, in public at the George Hotel, Brighouse, Huddersfield, or any other of their places, certain specified musical pieces or any other musical works of which the right of performance was in the plaintiffs, without leave of the plaintiffs. The defendants admitted that the musical works referred to had been broadcast on the dates alleged and that they were audible to their customers by means of a radio receiving set which was installed at their premises and under the control of their servants, but denied that there had been a public performance entitling the plaintiffs to royalties in addition to those received by them from the British Broadcasting Corporation. Mr. Justice MAUGHAM held that there had been a public performance. The Master of the Rolls, in upholding Mr. Justice MAUGHAM'S judgment, pointed out that the agreement between the plaintiffs and the British Broadcasting Corporation only authorised and covered "the audition or reception of copyright musical works within the repertoire for the time being of the society by means of broadcasting for domestic and private use only." Section 35 of the Copyright Act, 1911, defined the word "performance" as meaning "any acoustic representation of a work . . . including such a representation made by means of any mechanical instrument." What the defendants had done was not merely to enlarge the audience of the public performance originally authorised by the plaintiffs, but by means of a mechanical contrivance to render it audible to another audience. His lordship cited *Buck* v. *Jewell Lasalle Realty Co.* (1930), 283 U.S. Rep. 191, 201, an American case, and the statement of the late Mr. Justice MCCARDIE in *Messager* v. *British Broadcasting Company* [1927] 2 K.B. 543, where he reviewed the authorities, and said: "Although wireless telephony may not be wholly 'mechanical' in the narrow sense of that word, yet I think that the Copyright Act extends to that which, although not definitely in the contemplation of those who framed the Act, yet falls substantially within the wide and embracing words employed in the defining clauses." The decision clearly follows from *Messager's Case*, and while it may deprive some restaurant and hotel patrons of a certain amount of entertainment, it renders common justice to those who depend on the composition of musical and other artistic compositions for a livelihood.

### Avoidance of Third-Party Policies.

THAT compulsory third-party insurance is not always a complete safeguard for the pedestrian was shown in two recent High Court cases decided on successive days. On 12th October, in *Smith* v. *Coulter* (*The Times*, 13th October), Mr. Justice MAUGHAM awarded £1,200 to a widow suing on behalf of herself and her seven children under the Fatal Accidents Act, 1846, for damages for the death of her husband caused by the negligent driving of the defendants. The alleged negligence consisted in taking out the car with defective brakes and a defective carburettor control, and the plaintiff's husband was killed while he was standing on the pavement. It was stated on behalf of the plaintiff that the insurance company had been able to escape liability on the ground that the policy contained a condition providing that the holder remained insured only so long as the car was in a road-worthy condition. *Gray* v. *Blackmore* (*The Times*, 14th October) was another case in which the defendant, an underwriter at Lloyds, was able to escape liability on the ground of a condition in the policy exempting the insurance company from liability in certain circumstances. The policy provided that damage caused while the motor car was *inter alia* being used otherwise than for private purposes was not to be covered, and "private purposes" were defined as meaning, *inter alia*, social, domestic and pleasure purposes and use by the plaintiff in person in connection with his business. Clause 6 of the certificate issued to the plaintiff pursuant to s. 36 (5) of the Road Traffic Act, 1930, provided that "private purposes" covered use by the policy-holder in connection with his business or profession; but did not cover use for any purpose in connection with the motor trade. The plaintiff was a garage proprietor, and at the time of the accident was towing for a short distance a Buick car which had broken down and which he had been asked to inspect for possible repair. The Buick car ran into the plaintiff and injured him. Mr. Justice BRANSON held that on the wording of the policy the car was not covered, as at the time of the accident it was being used in connection with the motor trade. The plaintiff also argued that the defendant was estopped from relying on the conditions in the policy, as he had issued a certificate stating that the plaintiff was insured in accordance with the Act, but his lordship said he did not see how such estoppel could arise, as the certificate contained on its face a statement of the conditions limiting liability. His lordship added that s. 36 (5) of the Road Traffic Act, 1930 (providing that the certificate delivered by the insurer must contain "such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed"), clearly contemplated that there might be conditions limiting the liability of the underwriters. The plaintiff also relied on s. 38 as annulling any such conditions. That section provides that "any condition in a policy . . . providing that no liability shall arise under the policy . . . or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim . . . shall be of no effect in connection with such claims as are mentioned in s. 36 (1) (*b*)." His lordship decided that without removing the comma after the word "cease," as the plaintiff wished to do, the object of the section was that where at the time when an accident happened, the person using the car was properly insured, so that the liability of the underwriter arose when the accident happened, the underwriter should not be allowed to escape from that liability owing to something which the insured did or omitted to do after the happening of the accident. Judgment was therefore entered for the defendant. The fact that the insured is subject to penalties if he uses the car without complying with the requirements of the Act is no consolation to the injured pedestrian, and it would undoubtedly be more satisfactory if the Act could be amended to cover such cases as these.

### Corpse Roads.

A CORRESPONDENT in a recent number of *Notes and Queries* refers to the impression prevailing in many country districts that if a corpse has been taken over a field either by carriers or by a wagon the fact creates a right of way for ever and ever. He adds that he has been told that there is no legal ground for such a contention, but, this notwithstanding, the belief appears to be firmly fixed in the rural mind beyond the possibility of displacement. An editorial note appended refers to an instance occurring in 1811, where it is said the

right was recognised, but no particulars are given of the alleged decision to this effect. For ourselves we have always understood that the matter had been placed beyond the reach of controversy by one of the cases reported by Sir GREGORY LEWIN in his "Cases decided on the Crown Side on the Northern Circuit." Readers smile at the artlessness and occasional absurdity of Sir GREGORY's reports, but if they are lacking in legal gravity they at least have the merit of brevity. To the case in point he provided this curt side-note: "A Funeral Passing," which, not being self-explanatory, we have to read the whole report, which we find to consist of this delightfully concise statement: "The notion that a funeral passing without interruption over a ground is conclusive evidence of a right of way, is a vulgar prejudice, and altogether erroneous—per Bayley, J." Could anything be more satisfactory? As one reads it the wish is engendered that more reports aimed at the like concision.

### Foreshore Law.

Two recent cases have raised points on the admittedly difficult laws of tidal waters and the foreshore. In one, *Moore* v. *Attorney-General for Irish Free State and Others* (reported in *The Times*, 9th October), the Judicial Committee of the Privy Council gave special leave to the plaintiffs claiming an exclusive fishery in the tidal portion of the River Erne, Donegal, to appeal from a majority judgment of the Supreme Court of the Irish Free State, reversing that of JOHNSON, J., the issues being whether such an exclusive right existed or could exist. In the other, before magistrates, certain persons landed on Brownsea Island, Poole Harbour, and brought charges of assault against the owner, her grandson, and a woman employé in respect of the method by which they were turned off from it. Each of these cases related to tidal waters. In the first, the defendants claimed to exercise the ordinary public right of fishing in tidal waters, alleging that the plaintiffs had no right to exclude them; in the second, one of the prosecutors had been digging for bait on the foreshore of the island for many years, and apparently claimed the right to do so. The defendants also raised the point as to the magistrates' jurisdiction in cases of alleged offences on the foreshore. On this we may perhaps refer to our note, "Jurisdiction on the Foreshore," 73 SOL. J. 548. Assault being an indictable offence, the magistrates appear *primâ facie* to have ruled correctly that they had jurisdiction to entertain the charge, all Poole Harbour being obviously in territorial waters. In *Bagott* v. *Orr* (1801), 2 Bos. & P. 472, it was held that all subjects have a right to take fish found on the foreshore, in the absence of proof of an exclusive right in some individual. The right to take shells, however, was not established, and the right to take bait, presumably lug-worms, etc., is, to put it moderately, even more doubtful. Two of the defendants were convicted and fined, the magistrates presumably holding that, even if the prosecutors were trespassing, the ejection, only lawful if "*molliter*," was not so carried out by the defendants found guilty. The fact that one of the alleged trespassers was thrown, or at least, by admission, "lifted" into the water, certainly suggests that there was no great miscarriage of justice. The Irish case (apart from the value of an Order in Council to enforce a recommendation of the Judicial Committee in Southern Ireland, a matter on which we do not at present comment) should be of considerable interest to lawyers, and perhaps throw light on very ancient legal history, one of the defences being that the grant of an exclusive fishery on the Erne was historically impossible, not being allowed by the Brehon law which there prevailed before Magna Charta. On this point a note may be found in *Malcolmson* v. *O'Dea* (1862), 10 H.L.C. 593, at p. 602, an Irish case, and another Irish case, *Neill* v. *Duke of Devonshire* (1882), 8 A.C. 135, appears in point. The owners of Irish fisheries appear to have had considerable trouble in establishing their rights: see also *Johnson* v. *O'Neill* [1911] A.C. 552.

## The Recovery of Statute-barred Fines

AND

## Enforcement of Forfeiture after Extinguishment of Manorial Incidents.

BY s. 138 of the Law of Property Act, 1922, the manorial incidents affecting enfranchised land are to be extinguished upon the happening of any of the following events:—

(*a*) Upon the execution before the 1st January, 1936, of a written agreement between the lord and the tenant as to the compensation for the extinguishment;

(*b*) Upon service before the 1st January, 1936, by the lord on the tenant or by the tenant on the lord of a notice requiring the ascertainment of such compensation; or

(*c*) Where no such agreement has been made or notice served before the 1st January, 1936, then on the 1st January, 1936.

In case (*a*) the compensation is fixed by agreement between the parties. In cases (*b*) and (*c*) the compensation is either fixed by agreement between the parties, or, in the absence of such agreement, is to be such as would have been payable for enfranchisement under the Copyhold Act, 1894, subject to certain amendments and modifications.

But by whatever means the extinguishment is effected, it is provided (s. 138 (1) (i) of the Act of 1922) that—

"The extinguishment of manorial incidents so effected shall not extend to or affect the right to enforce any manorial incident which has become due or enforceable before the date of the extinguishment."

Two questions of difficulty arise in the practical application of this proviso, viz.:—

(1) Does the proviso entitle the lord to recover statute-barred fines? and

(2) To what extent does the proviso entitle the lord to enforce forfeitures?

If the compensation is to be fixed by agreement, it is, of course, competent for either party to stipulate for an express provision as to statute-barred fines. In the following discussion it is assumed that the compensation agreement is silent on the point or that the amount of the compensation has been ascertained under the Copyhold Act, 1894.

*As to statute-barred fines.*

The following are the relevant provisions of the Act of 1922. By s. 128 (1) and (2) and the 12th Sched. enfranchised land ceases to be of copyhold tenure and becomes freehold land. By s. 128 (2) nothing in Pt. V of the Act shall affect the following manorial incidents, viz: (*inter alia*) fines, reliefs, heriots and dues; "and accordingly (subject to the provisions of this Act) the enfranchised land and the persons for the time being entitled thereto shall, until the manorial incidents so saved are extinguished, remain subject thereto in like manner as if the land had not been enfranchised."

By s. 130 (1) until the manorial incidents have been extinguished, the same fines are payable on any transaction which would have been payable if the land had remained copyhold. By s. 130 (5) "Fines and heriots (whether payable before or after the commencement of this Act) shall be recoverable as simple contract debts and not otherwise, and shall not be recoverable (in the case of fines and heriots becoming payable after such commencement) after the expiration of six years from the date when they became payable, or (in the case of fines and heriots payable at the commencement of this Act) after the expiration of six years from such commencement."

The question is whether, in view of the express provision in s. 130 (5) that fines "shall be recoverable as simple contract debts *and not otherwise*," fines in arrear for more than six years can be recovered (after extinguishment of the manorial incidents) under the proviso (i) to s. 138 (1), that such extinguishment "shall not relate to or affect the right to

enforce any manorial incident which has become due or enforceable before the date of the extinguishment."

It is stated in 1 "Wolstenholme and Cherry's Conveyancing Statutes," 2nd ed., p. 20—"the extinguishment of manorial incidents is (see 13th Sched., Pt. I, Form 2) on the same footing as the redemption of a mortgage debt; hence all arrears, whether barred or not, must then be paid; *cf. Re Lloyd* [1903] 1 Ch. 385. The payment of the arrears is a condition precedent to the extinguishment, unless, expressly or by implication, waived by the lord: see s. 138 (1) (*b*); the extinguishment does not affect this right: *ib.*, (1) (i)." And in the addenda to p. 85, reference is made to *Dingle* v. *Coppen* [1899] 1 Ch. 726.

By Form No. 2 in Pt. I of the 13th Sched., the lord acknowledges the receipt of the compensation money, and also that "all rents, fines, reliefs, heriots and fees payable in respect of the land" have been duly discharged. The use of this form is permissive (s. 138 (11)). Moreover, as the form does not mention statute barred fines, the receipt for fines appears to have no special significance. It is also difficult to see how the payment of arrears can be said to be a condition precedent to extinguishment. Indeed, it seems clear that by s. 138 (1) the extinguishment is simultaneous with the execution of the compensation agreement or the service of a notice requiring the ascertainment of the compensation, and that extinguishment would not be postponed by the refusal of the tenant to pay unpaid fines, whether statute barred or not.

*Dingle* v. *Coppen* and *Re Lloyd* were both cases in which it was decided that a mortgagor of land seeking to redeem must pay all arrears of interest, although by s. 42 of the Real Property Limitation Act, 1833, not more than six years' arrears could be recovered "by any distress, action or suit." The grounds of this rule are two-fold, viz.: (1) that a mortgagor seeking to redeem is a person "on whom a court of equity has the power to impose terms as the price of the relief which it may see fit to give" (1903, 1 Ch., at p. 403; [1899] 1 Ch., at p. 746), and (2) that in a redemption action the mortgagee is not seeking to recover the arrears "by distress, action or suit," and that where the remedy of a creditor is barred by statute, but the right remains, he may enforce that right by means of any lien or right of retainer that is available to him ([1903] 1 Ch., at p. 401). As regards ground (1), a tenant seeking to extinguish manorial incidents has certain statutory rights and obligations. But he seeks no relief from any court. As regards ground (2), the enfranchisement is effected by statute. The lord has nothing to retain, nor is there any act, such as reconveyance, which he can abstain from doing until his claim for the statute-barred fine has been met.

There is also a significant difference in the wording of the two Acts. By s. 130 (5) of the Act of 1922, fines are "recoverable as simple contract debts and not otherwise, and shall not be recoverable" after the expiration of six years. By s. 42 of the Act of 1833, no arrears of interest shall be recovered by any "distress, action or suit," but within six years, clearly leaving other remedies untouched. It is submitted that when s. 130 (5) says that fines "shall be recoverable as simple contract debts *and not otherwise*," it means what it says, and that after the statutory period fines cannot be recovered by any means whatever.

But in case this view should be wrong, it may be well to consider what means, other than an action, are available to a lord for enforcing payment of a fine. Before the Act of 1922 a lord in certain cases had two other remedies for compelling payment of a fine, viz., seizure *quousque* and the threat of forfeiture.

*Seizure quousque.*—Section 6 of the Act 11 Geo. 4, and 1 Will 4, c. 65, gave to the lord the right of compelling payment of a fine due on the admittance of an infant, married woman, or lunatic by seizure *quousque* of "copyhold land." But seizure *quousque* is not a manorial incident saved by s. 128 (2), and it is submitted that by reason of s. 128 (1) and the 12th Sched. "copyhold land" has ceased to exist, so that s. 6 of the Act 11 Geo. 4 and 1 Will 4, c. 65, is no longer applicable. Moreover, except under that Act, seizure *quousque* could not be used for enforcing payment of the fine, but only as a means of compelling admittance, the right to a fine not accruing until admittance ("Elton on Copyholds," 2nd ed., pp. 151–2).

*Forfeiture.*—Forfeitures (with certain exceptions) are saved from the effect of enfranchisement by s. 128 (2) (*c*), and it is submitted that enforcement of a forfeiture for refusal to pay a fine is not a proceeding for recovering a fine, so as to be prohibited by s. 130 (5). But could a forfeiture be enforced for a refusal to pay a statute-barred fine? It is submitted that it could not.

"Forfeitures are *strictissimi juris*, and . . . parties who seek to enforce them must exactly pursue all that is necessary in order to enable them to exercise this strong power" (per Lord Chelmsford in *Clarke* v. *Hart* (1858), 6 H.L.C. 633, at p. 650).

The following are conditions precedent to the enforcement of a forfeiture (1 "Watkins on Copyholds," 4th ed., pp. 378, 379 and 397), viz.: (*a*) the fine must either be certain or have been assessed, (*b*) payment of the fine must have been demanded by the lord or his steward of the tenant in person, (*c*) the place appointed for payment must be within the manor, and (*d*) the refusal by the tenant to pay must be wilful and absolute. But it appears that if the tenant has a valid reason—or even excuse—for his refusal, there is no forfeiture. Thus, according to "Watkins" (4th ed., p. 398), "if it be doubtful whether they be due or not, and the copyholder refuse till they be ascertained; or if, on the demand of rent, he says he has no money; and so entreats the lord to forbear; no forfeiture will thereby be incurred." It is, therefore, suggested that a refusal to pay a statute-barred fine would not be a wilful refusal, and that the lord could not enforce the forfeiture without proving that demand was made before the fine had become irrecoverable. In other words, forfeiture for refusal to pay a fine will only be available if the right of forfeiture had actually accrued and become enforceable while the fine was still recoverable under s. 128 (2).

It should also be noticed that the enforcement of a manorial incident after extinguishment is only permissible under s. 138 (1) (i), if it was due or enforceable *before the date of the extinguishment*. The lord would, therefore, have to prove that the conditions precedent to forfeiture had all been performed before extinguishment. It would be too late for him to demand the fine for the first time after extinguishment of the manorial incidents.

At common law, if the tenant conveyed any common law interest in his lands to another, or made a lease for years without licence, a forfeiture ensued. Forfeiture for these causes is not saved by s. 128 (2), and is no longer available to the lord. Nor does the Act of 1922 preserve rights of forfeiture accrued before the commencement of the Act. It follows that where the alienation without licence took place before the 1st January, 1926, the lord has no remedy. Where the alienation takes place on or after the 1st January, 1926, then by s. 130 (2) the same fine is payable as would have been payable for a licence authorising the alienation. But s. 130 (2) does not appear to apply to alienations made before the commencement of the Act.

In some manors by special custom a fine was payable on the grant of a licence for the tenant to lease (1 "Watkins," 4th ed., p. 384). But the fine was payable on the licence, not on the lease. Hence, if the lease was made without licence before the 1st January, 1926, no fine became payable, though a right of forfeiture (destroyed by the Act of 1922) accrued. Any claim, therefore, by the lord for a fine in respect of a lease made without licence before the 1st January, 1926, should be firmly resisted.

# Aerial, Road and Sea Collisions.

APART from the fact, stated by counsel, that it was the first action to arise on a collision between two aeroplanes, *Cubitt and Terry* v. *Gower* (77 SOL. J. 732) presents no feature of particular legal interest. Normally it would have involved the construction of s. 9 of the Air Navigation Act, 1920. This section makes the owner of an aeroplane responsible for any accident involved by its use, unless negligence causing the accident can be proved against the person who has suffered and sues for damages for it. In the above action Acton, J., held that the defendant, pilot and owner of an aeroplane, had been guilty of negligence in starting her machine, such negligence being the cause of the accident, the plaintiff, pilot of the aeroplane injured, being innocent of any breach of his duty as such. Where an accident is caused by one party without any negligence or fault of the other, the laws as to aerial, road and sea collisions alike give due remedy to the party injured, and no one questions their propriety. The differences and difficulties arise in the other hypothetical cases, namely, where neither party is to blame, and where both parties are to blame. Where neither party is to blame, the road law, as exemplified by such cases as *Hammack* v. *White* (1862), 11 C.B. (N.S.) 588, and *Manzoni* v. *Douglas* (1880), 6 Q.B.D. 143, appears to accord with the sea law as laid down in *The Merchant Prince* [1892] P. 179, and *The Annot Lyle* (1886), 11 P.D. 114. These authorities show that no action will arise on the collision of vehicle with vehicle (or pedestrian) or ship with ship where the collision is due to inevitable accident which no human vigilance could prevent. An accident caused by an "act of God" would, of course, be an *à fortiori* case. The air law differs from the road and sea law, in that s. 9 of the Act of 1920 makes the owner responsible for an accident due to the flight, taking off or landing of an aircraft, or due to objects falling from it, etc., whether the accident arises from carelessness or is inevitable. On the wording of the section, it does not appear that any plea as to the accident causing the damage being due to an "act of God" would be any defence under it. The Act in fact makes those who own aircraft insurers of the safety of the public in respect of their use, save only when an accident is wholly due to the negligence of the person injured. There have been several proposals, notably in Lord Danesfort's Bill which he recently introduced into the House of Lords, for such a law to apply to motor cars on public roads. It would hardly seem fair, however, to apply it in its rigour to the owners of motor cars and to except the owners of horses, which may bolt even with the most skilful of riders and drivers, exercising their utmost care to control them.

The law as to contributory negligence applicable to collisions on roads and by sea has often been the subject of comment in these columns (see, for example, the articles appearing in this journal in vols. 76 and 77, at pp. 445 and 260 respectively). That as to the collision of two aeroplanes when both drivers are to blame has not yet been the subject of authoritative decision under s. 9, *supra*, but no doubt the owner of an aircraft which caused damage in flight to another would have to prove affirmatively, first, that he was not guilty of negligence himself, and, secondly, that the other pilot was guilty, in order to bring himself within the proviso to s. 9. If both were guilty, presumably each owner would be responsible for the damage to the other's plane, and there would be no adding up and apportionment of damages as in sea cases under the Maritime Conventions Act, 1911. From the legal point of view, the above action would have been much more interesting if both pilots had been found guilty of negligence, and the results worked out. Aeroplane collisions in time of peace are very rare, and it may be hoped that they will continue to be, so that the question of the law applicable to them when both pilots are to blame may merely be of academic interest.

Lord Danesfort's Bill as to roads went so far as to make the owner of a car liable in damages for an accident due to its use even if the person injured was at fault. No one who reads *Neenan* v. *Hosford* (1920), 2 L.R. 258, or some of the other cases as to contributory negligence in car accidents, can say that the present law is satisfactory, and our suggestion (see 73 SOL. J. 789) that the principle of the Maritime Conventions Act, 1911, should be applied to them has since received considerable support. A jury left to decide one way or the other in a case in which there is hard swearing on both sides as to events happening in fractions of seconds may well be puzzled, even to disagreement, as not seldom happens, but, if allowed to apportion the blame, can apply common-sense and arrive at that rough justice which in other words is a fair compromise.

# Company Law and Practice.

LAST week I was talking about the position of receivers, and in particular with regard to their personal liabilities, if any, and as to whether they are agents or principals. Summed up, it comes to this, that a receiver appointed by the court is a principal, but with a right to indemnity out of the assets; that the position of a receiver out of court depends upon the terms of the instrument under the powers contained in which he is appointed, but that he is almost invariably at the present day the agent of the company. This agency, however, determines on the liquidation of the company. Now in connection with the appointment of a receiver, there are certain things to be done, mere matters of routine almost, which it occurs to me may be worthy of mention here. Doubtless they are known to every lawyer and every accountant, but reminders are sometimes not without their use.

**Formalities in Connection with Receiverships.**

As one of the main features of company law in this country is the public register, in which various kinds of information must appear, kept with the express object of giving to the world at large notice of various matters in connection with every company, it is perhaps hardly surprising that the Act requires registration of the appointment of a receiver. This is achieved by the Companies Act, 1929, s. 86, the provision for registration of an appointment in which applies equally to receivers appointed by the court in debenture-holders' actions and receivers appointed under any powers contained in any instrument. It should be noticed in passing that it does not apply to a receiver appointed under the statutory power, unless it could be said that the statutory power is impliedly incorporated in the mortgage deed, or whatever it may be; but, as I pointed out last week, the statutory power is not of any substantial practical use in connection with our present discussions. Still, you might get a company, particularly something like a company which invested in land, which created mortgages in which there was no express power to appoint a receiver, and when a receiver was appointed in such circumstances the fact that notice need not be given under the Act might prejudicially affect some person who dealt with the company after the appointment of the receiver.

The notice to the registrar has to be given within seven days from the date of the order making the appointment or of the appointment under the power, as the case may be, and, when it has been given, the registrar must enter the fact in the register of charges, but not before he has received the prescribed fee. The prescribed fee is 5s.: Companies (Fees) No. 1 Order, 1929. The onus of giving the notice to the registrar is upon the person who obtains the order or makes the appointment, as the case may be; and the penalty for default in giving notice to the registrar (and, presumably, paying 5s.) is a

maximum fine of £5 per day for every day during which the default continues.

It is only natural that the termination of the office of receiver should require notification in the register, and s. 86 provides for this also; but in this case the notice is to be given only in the case of a person appointed receiver or manager of the property of the company under the powers contained in any instrument. On such person ceasing to act as such receiver or manager he must give notice to the registrar to that effect. It must be borne in mind that the obligation in this case is on the receiver, and not on the person who made the appointment. The penalty for default to notify the ceasing to act is the same as in the converse case, namely £5 per day. Doubtless the reason why a notification of ceasing to act to the registrar is unnecessary where an order has been made for the appointment of a receiver is that the entry on the register in that case shows that the appointment has been made by the court, and consequently it will be possible to find out in the debenture-holders' action whether an order has been made discharging the receiver. It is, of course, unnecessary for me here to say anything as to the inadvisability of dealing with a company in cases where a receiver has been appointed over the undertaking and assets of the company.

In addition to the notice which has to be put on the register in accordance with the provisions of s. 86, there are also the perhaps better known requirements of s. 308, which requires notice to appear on all invoices, orders and business letters. I will not weary my readers with the details of this section, which is a very familiar one. The next of this group of sections, namely, s. 309, is perhaps less familiar; it deals with the remuneration of persons who are appointed receivers under the powers contained in an instrument. The court is given power, on the application of the liquidator of the company, to fix the remuneration payable to any such receiver, and also to vary it from time to time on the application of the liquidator or the receiver. In this way a certain measure of protection is given to the persons interested in the equity of redemption in cases where the company has gone into liquidation, whether the persons so interested are creditors or shareholders. It applies whether the liquidation is compulsory, voluntary or under supervision. Again it will be noticed that this, in common with other sections, does not apply to receivers appointed by the court; the latter functionary, as an officer of the court, has his path so mapped out for him by the court, that it is quite unnecessary to make extensive provision by the Act as to what he shall do and shall not do.

Section 310 is another illustration of this. It requires every receiver or manager appointed out of court to deliver to the Registrar of Companies for registration accounts showing his receipts and payments for every six monthly period during which he acts, and also in respect of the period between the close of his last six monthly period and the time when he finally ceases to act. In each case these accounts must be delivered within one month of the end of the period to which the accounts relate, and the last one must also show the aggregate amount of all his receipts and payments. A penalty of £5 per day for default is available to encourage the due presentation of such accounts, if any encouragement is necessary.

But this penalty is not all: the court has power, on the application of any member or creditor of the company, or of the Registrar of Companies, to make an order directing the defaulter to make good the default within a time to be specified in the order, and also to order the receiver to pay the costs of and incidental to the application. This power in the court applies equally to a case where the receiver has failed to give notice that he has ceased to act under s. 86; but in no case can the application be made until a notice has been served on the receiver in default requiring him to make it good within fourteen days. Under Ord. 53B, r. 8 (*j*), an application of this kind must be made by summons. This power of making mandatory orders is contained in s. 311, which takes care to provide that nothing contained in it is to be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of default under their statutory obligations.

Section 311 also provides for another possible difficulty, namely, the case of a receiver appointed out of court, who, after being required at any time by the liquidator of a company so to do, fails to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him. In the case of such default the court may again make an order requiring the receiver or manager to make good the default within a time to be specified by the order. Again, the application must be by summons: Ord. 53B, r. 8 (*j*). The liquidator must be the applicant.

This is to the good so far as it goes: but what is the position of a company not in liquidation which can get no proper accounts out of the receiver and cannot get paid what is owing to it? In the great majority of cases, no doubt, this question is purely academic, because there will be no surplus for the company; but the legislature has seen fit to provide for what is to happen when the company is in liquidation in such a case, so why not when the company is a going concern? Maybe the answer is that the proper proceeding is to bring an action for redemption—but if this is proper in the one case, why not in the other?

There seems to be very good ground for saying that the most careful consideration ought to be given to the question as to whether or not some general power for applications to be made to the court in the case of receiverships originated out of court should not be inserted in the Companies Act. In the case of a voluntary liquidation application can always be made under s. 252 "to determine any question arising in the winding up of a company." Why should not there be some parallel power where a receiver is appointed out of court? Questions arise frequently enough, as is well known, where receivers are appointed out of court; and, if these questions cannot be satisfactorily adjusted, there are only two courses open in the vast majority of cases.

One is to start a debenture-holders' action and get a receiver appointed by the court who can then apply by summons in the action to get the matter disposed of, and the other is to start an action to determine only the point in issue. This seems to savour somewhat of unnecessary expense, when an application by originating summons might dispose of the whole thing comparatively cheaply and expeditiously. Further, why should not all applications of this sort, and *all* debenture-holders' actions, be assigned to the winding-up court? The moment an order for winding up is made, a debenture-holders' action which is proceeding in the Chancery Division must be transferred to the winding-up court—the sensible and economical course would seem to be to require all such actions to be so assigned in the first place. The winding-up court seems to be their proper home—its officials are thoroughly familiar with, and in daily contact with, the problems which arise, and on every score it would seem desirable that something of this sort should be done. Reform is in the air; could we not be allowed one which has everything to recommend it, and nothing against it?

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## OFFICES OF THE COUNTY COURTS.

The offices of the County Courts shall be closed on Monday, the 1st day of January, 1934, unless in any particular case the Lord Chancellor otherwise directs.

Nothing in this Order shall apply to the District Registries of Liverpool and Manchester.

By Order of the Lord Chancellor.
Dated the 5th day of October, 1933.
(Sgd.) A. E. A. NAPIER,
Assistant Secretary.

# A Conveyancer's Diary.

**Loss occasioned by Breach of Trust.**

I HAVE been reading that most valuable and interesting book "Withers on Reversions," and one chapter to which I have had to refer strikes me as very interesting and instructive—that is the chapter called "Equities."

Amongst other things the learned author discusses the question as to the contribution to losses incurred in a trust, and in the course of that considers what the position is where payment has been made to the wrong person.

Mr. Withers states the different ways or grounds upon which payment may wrongly have been made to B as follows:—

(1) On a wrong construction of the document;

(2) To a person who incorrectly alleges that he is B;

(3) Without regard to a notice received by the present trustees of a mortgage or sale, etc., made by B;

(4) Without payment of, or allowance for, the duties payable;

(5) In ignorance of the fact that the appointments to B were void on account of a fraud in the power;

(6) In ignorance of a notice received by former trustees but not handed on to the present trustees of a mortgage, etc., made by B.

Generally, in all such cases the loss falls upon the beneficiaries as a whole, but if the loss happens in a part of an estate which has been set aside or properly appropriated, there of course the loss falls on those only who are entitled to that fund.

Naturally, in many cases the trustees making the payment are responsible for the mistake, but it may be that the sum cannot be recovered from them, and so the loss must be borne by all the beneficiaries.

The leading case where the general rule was stated is *The Liquidation Estates Purchase Co. Limited* v. *Willoughby* [1898] A.C. 321.

In that case the facts were that Walker purchased property and sold it at a profit. Out of his profits he had to pay £50,000 to Kennedy, Willoughby and Paulet, who had advanced the deposit paid by him on purchasing the property. Kennedy's share of that was £12,000. Kennedy charged his £12,000 in favour of Norton, who gave notice to Walker. Notwithstanding the notice, Walker paid Kennedy. It was held by the House of Lords that Norton's assignees were not affected by the wrongful payment to Kennedy and were not obliged to treat the payments to Kennedy as a payment to them. The loss fell upon all the parties rateably.

Lord Halsbury, L.C., said: "I am unable to understand in what way Walker's improper use of his possession of the property realised by the re-sale can affect Norton's rights or any person claiming under Norton. If, instead of handing it over to Kennedy he had been robbed of it, and all that remained of the property was insufficient to pay all the persons having rights under it, why should Kennedy's assignee be in a less favourable position for receiving his proportionate amount because the whole fund had been diminished by the unlawful act of the robber? Can it make any difference that Walker, in defiance of his duty, thought proper to divert a certain sum of money from the gross fund in favour of Kennedy at a time when to his knowledge Kennedy had no right to receive it? What Norton in right of Kennedy's previous rights was entitled to was the amount of his debt from Kennedy and why Norton should be selected as the victim of a loss to which he in no way contributed I am unable to understand. Lindley, L.J., uses the phrase that he did not understand why Norton's loss should be thrown on the other adventurers. It appears to me that the words 'Norton's loss' involve the fallacious assumption that in some way or another the share which had once belonged to Kennedy and which by the hypothesis at the time of the handing over to Kennedy no longer belonged to him must be so earmarked as already Norton's that it becomes Norton's loss; but this I think is erroneous. If the whole fund created has been *pro tanto* diminished by an unlawful act of the person who by the agreement of all the parties was the custodian of the money and the person through whose hands it was to be distributed, it appears to me that the observation to which I have referred might be reported, and it might with propriety be asked, why should the part of the loss which was a loss to the whole fund be appropriated to one particular adventurer or the assignee of that adventurer? No one has ever yet explained what Norton did or what Norton omitted to do which made him more responsible for a loss of any part of the fund than any of the other adventurers, and I am therefore of opinion that on this part of the case the judgment of the majority of the court below is erroneous."

I may add here that it seems that the relief afforded by s. 30 (1) and s. 61 of the T.A., 1925, is not available to a trustee who, even though as the result of an honest mistake has misapplied trust funds by paying them to the wrong person (*Re Windsor Steam Coal Co.* (1901) *Limited* [1929] 1 Ch. 151), although he might be in a position to obtain some relief under s. 62 if the breach had been committed at the instigation of a beneficiary.

# Landlord and Tenant Notebook.

**Partnerships and Tenancies.**

PARTNERSHIP agreements, even when properly drawn up in the form of a deed, often omit to pay proper attention to the matter of premises. As, however, any business other than that of a gypsy has to be carried on somewhere, disputes have frequently arisen between partners, and between partners and landlords, and have had to be decided on general principles. The authorities illustrating these principles are not as a rule adequately dealt with in books on the law of landlord and tenant, and are somewhat scattered in those dealing with partnership. I propose in this article to discuss decisions affecting problems most likely to arise in practice.

The authority of one partner to take a lease on behalf of the partnership was gone into in *Sharp* v. *Milligan* (1856), 22 Beav. 606, and in *Clements* v. *Norris* (1878), 8 Ch. D. 129, C.A. The former action was a claim for specific performance against three ex-partners, the plaintiffs being the personal representatives of a millowner who, in 1841, had verbally granted a twenty-one-year lease to the then partnership, which was not for a fixed term. In 1843 one of the partners signed a written agreement for a lease, in the name of the firm, but without, it was alleged, his partners' authority. In 1847 the partnership was dissolved, but the aforementioned signatory continued to occupy, pay rent and carry on the business till he went bankrupt in 1856. Hence the claim. Two important rules were applied by the court; as no term had been fixed for the partnership, no partner had implied authority to bind the others to a twenty-one-year lease; but the others, having remained in possession with knowledge of the agreement, must be taken to have authorised it, and were not mere yearly tenants. But in *Clements* v. *Norris*, though the partnership was for a fixed term which had not expired, the plaintiff successfully obtained an injunction restraining his partner from employing partnership assets and pledging the plaintiff's credit in a business carried on at additional premises they had taken and the lease of which had been renewed to the defendant only, the plaintiff declining to concur. The motion was refused at first instance, the defendant urging that the deed of partnership provided for business to be carried on at an agreed place; but the Court of Appeal could not see how a judge was to decide what place might be suitable.

Renewals of leases have, however, more often led to the opposite kind of trouble—disputes in which the plaintiff

claimed the benefit rather than disclaimed the burden. In view of the prominence given to goodwill by, and the statutory right of renewal created by, L.T.A., 1927, it is interesting to note that, as long ago as 1684, in the case of *Palmer* v. *Young*, shortly reported in 1 Vern. 276—but of which an interesting report and account will be found appended to *Re Biss*, *infra*—it was laid down, in effect, that if one of two tenants obtained a renewal of the lease the other was beneficially entitled by virtue of an implied trust. The authority most quoted in partnership cases, however, is *Ex parte Grace* (1799), 1 Bos. & P. 376; in this case the son of a tenant who had died intestate thereby became entitled to the lease jointly with his mother; the mother re-married, and her husband took possession and soon after obtained a new lease, granted to himself only, to commence on the expiration of the current one. It was decided that though there was no covenant for renewal in the old instrument, the stepfather held the new lease in trust for self and stepson, and on the sale of the lease consequent on the stepfather's bankruptcy, the son was able to claim part of the proceeds.

This principle has been applied in numerous cases, too numerous to be mentioned here; as an instance I take *Clegg* v. *Fishwick* (1849), 1 Mac. & G. 294. The facts of that case were, that several partners held a lease of a coal mine, which they worked; that one of them, of whom the plaintiff was the widow and administratrix, died during the term of the partnership; that some of the partners then obtained a grant of a new lease *in futuro*; that the partnership was dissolved after the grant was obtained, but before the term of the new grant commenced. Even in these circumstances it was held that the plaintiff had an interest in the new lease, because it was granted when she had an interest with the partners; and Lord Cottenham in his judgment spoke of the "tenant-right of renewal" (!) which arose out of the old lease.

But the interest of the excluded partner in these cases is a presumed one, and how the presumption may be rebutted was illustrated by *Re Biss*: *Biss* v. *Biss* [1903] 2 Ch. 40, C.A. In this case a yearly tenancy of a lodging-house had, on the death of the tenant, been held by his widow as administratrix for herself and her son. The landlord was asked to grant a new lease, and refused to entertain the idea as far as the estate was concerned, but finally granted, out of regard for the deceased tenant, a new lease to the son, at an increased rental. The widow was held to take no interest.

Other disputes in which the law of landlord and tenant plays a part are those which arise on the dissolution of a partnership carried on on premises let to or owned by one of the partners. In *Doe d. Colnaghi* v. *Bluck* (1838), 8 C. & P. 464, the partnership business was carried on in a house in which Colnaghi resided; the ground floor was used for the business, rent being paid to Colnaghi, who did the repairs, and the defendant, his partner, had been heard to say that he was a good landlord. On the dissolution of the partnership, the defendant refused to move out, and Colnaghi sued in ejectment. The court decided that the partnership had held of Colnaghi, who therefore had a right of entry on its dissolution. This authority applied an older one, *Doe d. Waithman* v. *Miles* (1816), 1 Stark. 181, in which the only issue was whether notice to quit was necessary; it was held that it was not. More recently, the problem arose in *Pocock* v. *Carter* [1912] 1 Ch. 663. In this case there had been a proper deed of partnership between three partners, providing that business should be carried on on specified premises, the rent to be payable out of partnership profits. These premises were held by one partner under a lease for 15¾ years, and the deed acknowledged her ownership of the lease. On dissolution by the court, an order was made for the sale of assets, payment and completion to be made on 20th October, 1910, and the master certified that rent was due from the partnership to the lessee up till 10th November, which was an anniversary of the deed of partnership. He did so on the basis that a yearly tenancy existed between the lessee and the partnership, and apparently considered that the only alternative was a tenancy at will. This order the court varied, holding that there was a tenancy for the duration of the partnership, so that rent must be apportioned till the date of dissolution.

One cannot help feeling that the reasoning of these decisions can be only artificially reconciled with the law of landlord and tenant. If a tenancy, and not a licence, is to be implied, the further implication that the term ends with the partnership is necessary; and on dissolution by agreement when the partnership is for a fixed period there might be said to be a surrender; but when dissolution results from an action for accounts taken by the "landlord" partner, the position looks perilously like forfeiture, in which case a forfeiture notice would be necessary. The original implication seems to be that the partner in whom the premises are vested, on the one hand, and the partnership, on the other hand, are landlord and tenant for a term analogous to that of a lease for the life of a tenant or so many years, whichever is shorter. And if a farming partnership run on these lines were dissolved by order of court, it seems to me that the partnership would have the usual rights under the Agricultural Holdings Act, which prohibits contracting out. We are told in the report of *Pocock* v. *Carter*, *supra*, that the partnership paid the rent; assuming that it was paid direct to the partner's landlord. I take it he may have received it as paid on behalf of his tenant, so I agree there is no need to talk of assignment. But the decision professes to follow *Bonham* v. *Gray* (1847), 5 C.B. 138, and *Burdon* v. *Barkus* (1862), 4 De. G., F. & J. 42—and in neither of these cases was it held, in so many words, that the partnership was tenant to the partner. Indeed, in each case everyone concerned seems to have fought shy of using language suggesting such a relationship; in the one, "right to the occupation" is as near as we get; in the other, the neutral expression "interest" was used. In my view, these matters would best be dealt with on the footing of licence.

## Our County Court Letter.

### ARROGATED DUTIES AND WORKMEN'S COMPENSATION.

In the recent case of *Bird* v. *British Goodrich Co. Ltd.*, at Burton County Court, an award was claimed by reason of incapacity, due to the amputation of two fingers on the left hand. The applicant's case was that (1) he was a hand worker in the footwear department, and had gone on duty at 7 p.m. on the 2nd June, (2) having finished his own work at 1.55 a.m. (on the 3rd June) he went—in accordance with previous instructions of the charge-hand—to help a press-worker who had no mate, (3) while cutting out canvas for tennis shoes, the press came down while his hand was underneath, (4) even if he was not supposed to work a machine, the prohibition was neutralised by the order of the charge-hand. The respondents' case was that (*a*) hand workers were not allowed to work machines, except on special instructions and for training purposes, (*b*) the machine was fool-proof, and was in perfect order after the accident, and had not "come down on its own" beforehand, (*c*) the usual operator of the machine had not seen the applicant work the machine that night, and the applicant had not (as alleged) helped him on previous occasions, (*d*) the applicant (who was a gum cutter) had had enough rubber to keep him busy to the end of the shift, and had, therefore, no reason to work a machine, (*e*) the practice of hand workers using the machines had not been permitted, connived or winked at by the responsible officials. His Honour Judge Longson preferred the evidence of the applicant to that of the section foreman, and (as the applicant's wages had been £1 16s. a week) an award was accordingly made on the basis of total incapacity, viz., £1 1s. 6d. a week, with costs on Scale B.

### ESTATE AGENTS' COMMISSION.

(*Continued from* 77 Sol. J. 416.)

In *E. H. Goddard & Son* v. *Webster*, recently heard at Nottingham County Court, the claim was for £40 12s. 6d. as commission on the sale of two shops, alternatively as remuneration for professional services incidental to the negotiations. The plaintiffs' case was that (1) they had been informed by the defendant that he was merging his business into a limited company, and wished to purchase the two shops, (2) the defendant did not wish to deal directly with the landlord, and was therefore willing to pay 1¼ per cent. commission to an agent, (3) the defendant instructed the plaintiffs to offer £1,750, but this was refused by the landlord, who declined further offers of £2,250 and £2,500—in spite of the plaintiffs' efforts to induce him to sell, (4) having had no intimation that the matter was no longer in their hands, the plaintiffs (having heard of the sale) had applied for commission. The defendant's case was that, after the refusal of £2,500, the plaintiffs had no instructions to proceed, although their commission would have been paid—if any of the offers had been accepted. Corroborative evidence was given by the owner of the property, who stated that (after his refusal of £2,500) he had no further communication with the plaintiffs, as the defendant got into direct communication, and eventually bought the property without an agent. It was contended that, as the plaintiffs had failed to secure acceptance of any of the offers, the defendant was entitled to take the matter into his own hands. His Honour Judge Hildyard, K.C., held that the plaintiffs were not the ultimate cause of the sale, and judgment was, therefore, given for the defendant, with costs.

## Obituary.

### Mr. J. R. N. MACPHAIL, K.C.

Mr. James Robert Nicolson Macphail, K.C., Sheriff of Stirling, Dumbarton, and Clackmannan, died in Edinburgh on Sunday, 15th October, at the age of seventy-five. He was admitted an advocate in 1886, and took silk in 1910. He was appointed Sheriff of Stirling in 1917, and he had been a Commissioner of the General Board of Control for Scotland since 1920.

### Mr. R. H. NICHOLSON.

Mr. Robert Herle Nicholson, barrister-at-law, of 2, Harecourt, Temple, died at Hale, Altrincham, on Wednesday, 18th October. Mr. Nicholson was called to the Bar by Lincoln's Inn in 1908.

### Mr. H. A. CASTELDINE.

Mr. Harry Alfred Casteldine, solicitor, of Norfolk-street, W.C., and Heston, died at Hounslow Hospital on Monday, 16th October. Mr. Casteldine was admitted a solicitor in 1927, and was a member of the firm of Messrs. Cannon Brookes & Odgers, of Norfolk-street, W.C.

### Mr. E. EVANS.

Mr. Evan Evans, solicitor, clerk to the Cardigan County Council, died at his home at Aberystwyth on Thursday, 12th October, at the age of eighty-three. Admitted a solicitor in 1878, Mr. Evans was appointed Deputy Clerk of the Peace and Clerk to the County Council in 1908. He was senior partner in the firm of Messrs. Roberts & Evans, of Aberystwyth.

### Mr. V. S. GRUNHUT.

Mr. Victor S. Grunhut, solicitor, a partner in the firm of Messrs. Grunhut, Grunhut & Makepeace, of South Shields, died recently. He was admitted a solicitor in 1924.

### Mr. F. W. LAWRENCE.

Mr. Francis William Lawrence, solicitor, a partner in the firm of Messrs. Windybank, Samuell & Lawrence, of St. Swithin's-lane, E.C., died on Thursday, 12th October, after a short illness, at the age of 54. He was the eldest son of the late William Thomas Lawrence, solicitor, of Millom, Cumberland, who was for many years Clerk to the Millom Urban District Council, in which office he was succeeded by his younger son, Mr. Arthur Lawrence, who practises at Millom. Mr. F. W. Lawrence was educated at St. Bees School, and after serving his articles with his father was admitted in 1901. Coming to London shortly afterwards, he joined Mr. Albert Lewin Samuell in partnership, and the firm of which Mr. Samuell is now the sole surviving partner took over the practice of Mr. Samuell's uncle, who died in 1903.

### Mr. G. YEWDALL.

Mr. George Yewdall, solicitor, partner in the firm of Messrs. Day & Yewdall, of Leeds, died at Harrogate on Thursday, 12th October, at the age of seventy-two. Mr. Yewdall was admitted a solicitor in 1885.

## Reviews.

*The Rent and Mortgage Interest Restrictions Acts, 1920 to 1933.* By Archibald Safford, of the Middle Temple, Barrister-at-Law. Demy 8vo. pp. xxxi and (with Index) 270. Seventh Edition. 1933. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

Those of us who have been familiar with the previous editions of this work need not be alarmed at the announcement that its structure has been slightly altered, and indeed anyone familiar with the apparently chaotic legislation which forms its subject matter will agree that, on a balance of consideration, greater hardship would now be caused to the practitioner by dealing with the "amendments" when dealing with what they purport to amend than by according them separate treatment. The reader will find the same careful documented examination of every word and phrase which has been the subject matter of a decided and reported issue which characterised previous editions of this book, and the introduction again contains a remarkably well-written summary of the whole of the legislation which, by apt references to its aims and to the methods which Parliament sought to employ to achieve those aims, is of great assistance in solving what would otherwise be obscure problems.

*Knowle's Evidence in Brief.* Fourth Edition. 1933. By Albert Lieck, Chief Clerk of Bow Street Police-court, and S. Lieck, LL.B. Crown 8vo. pp. xxvi and (with Index) 158. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

The original object of this work, as its title indicates, was to give a clear and concise statement of the principles of the law of evidence, and the fact that the fourth edition has been called for is sound testimony to the usefulness of the work. The present edition contains extra chapters on "judicial notices," "circumstantial evidence," and "corroboration." Although primarily intended for students of the law of evidence, it is safe to say that this little volume may well be found useful by the busy practitioner, as it well bears out its title of a book on evidence "in brief."

*The Children and Young Persons Act*, 1933. By Alfred E. Ikin, B.Sc., LL.D., Director of Education, Blackpool. 1933. Royal 8vo. pp. xii and (with Index) 310. London: Sir Isaac Pitman & Sons, Ltd. 10s. 6d. net.

This volume deals solely with the statute of 1933, the text of which is fully set out and annotated. The author hopes that the book will not only assist those who in their different

spheres may have to deal with the law in action, but will also be of service to members of county and borough councils and their officers and others connected with the administration of justice in regard to children and young persons. The volume deals in particular with the re-organisation in the state reformatory and industrial schools (now known as "Home Office" schools), and also with the law relating to infant life protection, and for this reason should be useful to medical officers of health and others connected with maternity and child welfare work. The appendix includes the Probation of Offenders Act, the Prevention of Crimes Act, 1908, the Children and Young Persons Act, 1920, and the Adoption of Children Act, 1926, altogether forming a useful and comprehensive work of reference.

*International Adjudications Ancient and Modern.* History and Documents, together with Meditorial Reports, Advisory Opinions, and the Decisions of Domestic Commissions, on International Claims. Edited by JOHN BASSETT MOORE. Modern Series. Vol. V. Royal 8vo. pp. xv and (with Index) 502. London: Humphrey Milford, Oxford University Press. 14s. 6d. net.

We have already noticed in this journal, vol. IV of this admirable collection. The volume under review deals with cases arising out of "Spanish Spoliation, 1795," the French Indemnity, 1803, and the French Indemnity, 1831. A great deal of laborious research was needed to prepare this volume, especially the part dealing with the Spanish Spoliation. No student of international arbitration can overlook Professor Moore's collection, which shows how certain principles of international law were evolved by those engaged in international adjudications.

*Master and Servant in a Nutshell.* By MARSTON GARSIA, B.A., of the Middle Temple and South Eastern Circuit, Barrister-at-Law. Second Edition. 1933. Demy 8vo. pp. v and 50. London: Sweet & Maxwell, Ltd. 3s. 6d. net.

This little volume of fifty pages is mainly intended for students and embodies in tabloid form all the points which arise out of the legal relationship between master and servant. It makes no pretence to being a text-book, but gives the legal position in an epitomised form. The present (second) edition is enlarged by a special chapter dealing solely with workmen's compensation, and the learned author appears not to have overlooked any material point.

*Real Property Law.* By G. R. Y. RADCLIFFE, M.A., of Lincoln's Inn, Barrister-at-Law, Principal of The Law Society's School of Law, Fellow and Bursar of New College. 1933. Demy 8vo. pp. xxviii and (with Index) 365. London: Humphrey Milford; Oxford University Press. 15s. net.

"The fruit of many years' experience in teaching Real Property Law to beginners, both before and after the changes wrought by the legislation of 1925." That is the learned author's own introduction to his work: and the definite conclusions arrived at by that experience and their bearing upon the teaching of real property law as set forth in the preface show themselves clearly throughout this admirable work. The development of this department of law is traced from its feudal beginnings down to the present day; and the final chapter deals with Registration of Title, "a rival system which, though still in its infancy, is doubtless destined in time to supersede the old law." To attempt to run over in detail the twenty-six chapters of the volume before us within the available limits of a review would be impossible. Let it suffice to say that the five periods of development from the days of Henry II to the passing of the great series of Acts in 1922 and 1925 are covered in the fullest detail; and the best perhaps that can be said of Mr. Radcliffe's work is that it is written in a style so interesting that it cannot fail to become highly popular not only among law students but among a large section of legal practitioners to whom the occasional perusal of a really readable text-book is a pleasant relaxation. It only remains to add a word as to the excellence of the general index compiled by Mr. P. F. Y. Radcliffe, of the Inner Temple, which enhances the value of the work as a book of reference on all points connected with real property law.

*The Law Clerks' Desk Book.* Edited by F. W. BROADGATE. Crown 8vo. pp. ix and (with Index) 277. London: Sir Isaac Pitman & Sons, Ltd. 6s. net.

This useful publication contains a collection of the tables of fees, professional charges and other information constantly required in a solicitor's office. The book is arranged so that each table of court fees is prefaced by a separate index, thereby simplifying reference and avoiding what would otherwise have been a rather cumbersome main index. The volume runs to nearly 300 pages and appears to embrace everything relating to fees in addition to a large amount of extremely useful information on other administrative matters.

## Books Received.

*Some Aspects of Income Tax.* By Sir WILLIAM M'LINTOCK, G.B.E., C.V.O. 1933. London: Gee & Co. (Publishers), Ltd. 9d. net.

*Shareholders and Auditors.* By THOMAS GREENWOOD, F.C.A. 1933. London: Gee & Co. (Publishers), Ltd. 6d. net.

*Solicitors' Audits.* By ARCHIBALD ERNEST CURRIE, Barrister and Solicitor. Second Edition. 1933. Demy 8vo. pp. x and (with Index) 105. Christchurch, New Zealand: Whitcombe & Tombs, Ltd. 15s. net.

*Legal Aspects of Mental Illness. Procedure.* Third Edition. 1933. By WILLIAM H. GATTIE, of Gray's Inn, Barrister-at-Law. pp. 86. London: Shaw & Sons, Ltd. 7s. 6d. net.

*Introduction to the Law of Scotland.* Second Edition. 1933. By WILLIAM MURRAY GLOAG, K.C., LL.D., and ROBERT CANDLISH HENDERSON, K.C., LL.B. Royal 8vo. pp. xlix and (with Index) 663. Edinburgh: W. Green & Son, Ltd. 42s. net.

# Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

## Solicitors Act, 1933.

Sir,—Mr. Barry O'Brien must scarcely have welcomed Mr. Johnson's support in your issue of the 7th instant.

His two points have, of course, been missed, because of their utter irrelevancy.

The rules are not aimed at the honest ones but at the dishonest ones, and statistics prove they are to be found lurking in the same camp as the upright Messrs. O'Brien and Johnson: therefore, Mr. Smart makes the obvious but none the less courageous suggestion that it should be put out of bounds to solicitors.

That may be sacrificing Messrs. O'Brien and Johnson to the public interest, but either the public interest is paramount or the whole wretched thing is mere eyewash.

The public does not think, but if it did it might reason that if a solicitor cannot command the confidence of a partner he does not deserve the confidence of a client.

The point of the gibe at Mr. Smart is that he apparently practises what he preaches.

It is too subtle for most of us.

Bedford Row, W.C.1. G. W. FISHER.
12th October.

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

## Lay Magistrates' Qualifications.

*Q.* 2837. In 1924 Z was sworn in as a county magistrate and took the oath of allegiance, and has sat at petty sessions fairly regularly. During the years 1909-1911 Z was twice committed to prison on charges of felony. Section 2 of the Forfeiture Act, 1870, appears to apply to those already holding office only.

(1) Is a felon capable of holding the office of justice of the peace without having first received the King's pardon ?

(2) Would convictions made by a petty sessional court of which such a justice was a member be void and voidable ?

(3) Please quote authorities.

*A.* The Forfeiture Act, 1870, s. 2, has been correctly interpreted, i.e., it only applies to those already holding office.

(1) A felon is incapable of holding the office of justice of the peace without having first received the King's pardon, but a convict who has served his sentence is no longer a felon. Completion of sentence is regarded as a purging of the offence, although it is not so efficacious as a King's pardon. The latter eliminates the conviction, i.e., on a future conviction the culprit could be regarded as a first offender.

(2) Convictions made by a petty sessional court, of which such a justice was a member, would not be void or voidable, as the appointment of the magistrate was subsequent to his conviction. The longest period of disqualification is seven years, under the Corrupt and Illegal Practices Prevention Act, 1883.

(3) See "Halsbury's Laws of England," Vol. 19, p. 551, and the "Magistrates' Handbook" (1929), by S. R. C. Bosanquet, K.C.

**Will**—Construction—Meaning of "Free of Duty"—Apportionment of Rates as between Devisee and Estate—Costs of and connected with Assents.

*Q.* 2838. (1) By his will, a testator, who died in 1933, bequeathed "the following specific legacies free of duty," subsequently setting out under headings (*a*), (*b*) and so on, sundry specific legacies of articles of personal use, also certain specific gifts of freehold and leasehold properties. Do the words "I bequeath the following specific legacies free of duty" apply so as to confer on such freehold and leasehold properties freedom from both estate and succession duties payable in respect thereof, or will they have to bear their own burdens of estate and/or succession duty ?

(2) The testator has paid the rates in respect of the said freehold and leasehold properties up to the 31st March, 1934. Can the executors recover from the specific devisees a proportion of such rates in respect of the period from the 20th July, 1933 (date of death) to the 31st March, 1934 ?

(3) By devising in two lots property formerly held under one title, testator has rendered it necessary to prepare an abstract of title (in addition to his assent) in favour of the beneficiary who will not obtain the original title deeds. Who should bear the cost of the preparation of—

(*a*) the assent;

(*b*) the abstract ?

*A.* (1) We express the opinion that all the gifts, being lettered, whether strictly speaking "legacies" or "devises," were intended to enjoy freedom from duty, and that the testator must be taken to have used the word "legacy" as a synonym of (say) "gift." Estate duty on all property passing to the executor as such (that is to say, personalty, including leaseholds (*Re Culverhouse, Cook* v. *Culverhouse* [1896] 2 Ch. 251)) comes out of the residue in the absence of any direction to the contrary, but realty does not so pass but by virtue of a statute (A. of E.A., 1925, s. 1). It follows, therefore, that specifically bequeathed personalty (including leaseholds) in the want of instructions to the contrary, does not bear its own estate duty, while specifically devised realty bears its own estate duty. In this case we express the opinion that the expression "free of duty" (which has in each case to be construed according to the provisions of the will where it occurs) merely relates to such duties as affect specific legacies and devises in common, in the absence of special directions. There are actually no such duties, pure personalty being liable to legacy duty and realty and leaseholds to succession duty, but as succession and legacy duties are in this case similar in incidence, we express the opinion that each of the lettered gifts is free of legacy or succession duty, as the case may be. The position then will be that the specifically given personalty (including leaseholds) will be free of estate, legacy and succession duty, while the specifically given realty will bear its own estate duty but be free of succession duty. We have not been able to trace a case on all fours with the present circumstances.

(2) We do not think so, in view of the fact that the liability for rates must have been due to personal occupation, covenant, or arrangement with the rating authority, and was not due to mere ownership. Further, the rate was due when made and demanded.

(3) We think that both these expenses should fall upon the residue. (See "Opinion of the Council" of The Law Society of 10th November, 1898, para. 1069, of the 1923 Edition of "Law, Practice and Usage in the Solicitor's Profession," at p. 284.)

**Grant of Building Leases**—Enforceability of Covenants *inter se* by Lessees.

*Q.* 2839. A.B. has laid out a close of land for building plots and proposes to grant leases for ninety-nine years of each plot to different builders or their nominees. The form of lease will be practically the same for each of the plots. Is it necessary that the form of lease should contain any provision to the effect that nothing in the lease contained should operate to impose any restrictions on the manner in which the lessor or persons deriving title under him may deal with the remainder of the land for the time being unleased or undisposed of or be otherwise deemed to create a building or road-making scheme for the said neighbouring lands or any part thereof ? In the absence of any such provision, would it be possible for the lessee of any plot to enforce the covenants contained in the lease against the lessee of an adjoining plot ? Also, in the absence of any such provision, would it be possible for the lessee of any plot to force the lessor to complete the laying out of the said close of land should the lessor, after granting some leases, decide not to complete the lay-out ?

*A.* We certainly think that it is very desirable in the interests of the grantor of the leases that the suggested clause should be inserted. As a matter of practice, it is no easy matter to enforce restrictions on the ground of the alleged existence of a "building scheme." Our subscribers will find the conditions under which such a scheme may exist so as to

make the restrictions enforceable by one lessee against another (and presumably the lessor also) laid down in *Elliston* v. *Reacher* [1908] 2 Ch. 374. Our subscribers will find articles on the subject generally in our more recent issues, *sub. tit.* "A Conveyancer's Diary"; see in particular our issue of the 29th July, 1933 (77 SOL. J. 535). We express the opinion that a lessee would not be in a position to force the lessor to continue the lay-out unless he took his lease on the express or implied representation that it would be continued to cover a specific area.

**Post-1925 Assurance to Two** DESCRIBED AS TRADING UNDER A STYLE—DEATH OF THE ONE—SALE.

*Q.* 2840. A lease was granted in 1927, expressed to be made between A of the one part and C and D, both of —— builders, trading under the style or firm of Messrs. —— of the other part. No reference is made in the habendum as to how the term is to be held by the lessees whether as joint tenants or as part of their partnership property or otherwise, nor is there any mention of the trusts on which the property is to be held which are usually inserted in documents relating to joint tenancies or tenancies in common. Presumably, therefore, the lessees took the property as joint tenants upon the statutory trusts. D died in 1930 intestate. C has now agreed to sell the property to F. and it is contended on behalf of F that C cannot make a title alone as surviving joint tenant of the legal estate but must appoint another trustee: (1) Can C make a title to the property alone as surviving joint tenant; (2) is the description of C and D in the parties to the lease sufficient to give notice to F that C is not beneficially entitled as surviving joint tenant, both in the legal estate and in the proceeds of sale; (3) if the answer to (2) is in the affirmative, can C make a title to the property with the administrators of D joining? (See "Cumulative Supplement No. 5, Enclosure of Forms and Precedents," p. 791), or must C appoint another trustee to act with him in view of the provisions of s. 27 (2) of the L.P.A., 1925, and also s. 42 (1) of the L.P.A., 1925.

*A.* (1) We do not think so. He is not the survivor of joint tenants "solely and beneficially interested," within the amendment of L.P.A., 1925, s. 36, effected by L.P.(Amend.)A., 1926, s. 7 and Sched; (2) we certainly think so; (3) the opinion is expressed that C can make title with the concurrence of these administrators, although such title could not be forced upon an unwilling purchaser any stipulation in any contract to the contrary notwithstanding (L.P.A., 1925, s. 42 (1)). Probably a purchaser would be ill-advised to accept such a title. An additional trustee should be appointed. Opinions differ as to the trust for sale affecting the property in the hands of C and D and of C as the survivor of them. One view is that L.P.A., 1925, s. 36 (1) is in point. It is suggested that this view is incorrect seeing that in equity partners hold in undivided shares (*Re Fuller's Contract* [1933] 1 Ch. 652). Another view (and probably the correct one) is that partnership lands are subject to an implied trust for sale for the purpose of realisation and winding up.

**Mortgage**—DECLARATION OF TRUST—EFFECT OF TRANSITIONAL PROVISIONS OF L.P.A., 1925, THEREON.

*Q.* 2841. By an equitable mortgage under seal, dated 22nd December, 1925, A declared that the deeds of certain land had been deposited by him with B with intent to create an equitable charge thereon, and he thereby charged the same with the payment to B of certain money then owing with interest thereon. A undertook, on request, to execute a legal mortgage to secure the money owing and declared that he would thenceforth hold the property as trustee for B, his heirs and assigns, and that B might exercise the statutory power of appointing a new trustee and remove A from the trusteeship, and that on such appointment he might appoint himself and also make the necessary vesting declaration. In 1928 B, as mortgagee, sold the land to C (A being bankrupt), and the conveyance recites that by virtue of the transitional provisions of the L.P.A., 1925, the property was vested in B for a term of 3,000 years, subject to cesser on payment of the moneys owing on the mortgage. We are acting for a purchaser from C, and it appears to us extremely doubtful whether the recital in the conveyance to him as to the effect of the transitional provision is correct. The mortgage being by deed, the mortgagee clearly had a statutory power of sale, but it appears to us that the legal estate still remained in A, and that B had no power to convey it except by appointing himself as trustee under the power contained in the mortgage, which he did not attempt to do. The transitional provisions do not appear to affect equitable mortgages, and cl. 7 (*j*) of Pt. II of the 1st Sched., apparently, prevents the vesting of the legal estate by reason of the agreement to execute a legal mortgage. We notice, however, that in cl. 1 of Pt. 7 of the 1st Sched. there is a provision that where land is vested in a mortgagee for an estate in fee simple, *whether legal or equitable*, it is to vest in the mortgagee for a term of 3,000 years. It would appear that by virtue of the declaration of trust contained in the mortgage, B had an equitable fee simple, as mortgagee, and it may be contended that he acquired a legal term under this provision. We do not wish to raise any difficulty as our client is a willing purchaser, and it would cause much delay and expense to get in the legal estate if outstanding, but we cannot, of course, accept the title if there is any serious doubt on the point.

*A.* We express the opinion that the recital in question is perfectly correct. By reason of the declaration of trust the mortgagee had on the 31st December, 1925, an *equitable* estate in fee simple in possession, and accordingly obtained, on the 1st January, 1926, and by virtue of L.P.A., 1925, s. 39 (7), and Sched. I, Pt. VII, para. 1, a term of 3,000 years as from the 1st January, 1926, without impeachment of waste but subject to a provision for cesser corresponding to the right of redemption then subsisting with respect to that equitable fee simple. We would observe that L.P.A., 1925, Sched. I, Pt. II, para. 7 (*j*), cannot be in point for cls. (*a*) to (*l*) of para. 7 of that part of the schedule only relate to matters dealt with by that part. (See the introductory words of para. 7.)

**The London Passenger Transport Act, 1933.**

*Q.* 2842. I am desired to advise the owner of a small passenger motor bus service within the London Passenger Transport Area as defined by the Act of 1933. The undertaking is not one of the "Independent undertakings" mentioned in Pt. (v) of the second schedule to the Act. Section 16 (1) provides that no person other than the Board shall after the appointed day except with the written consent of the Board carry . . . any passengers, etc., as therein mentioned. By s. 107 the appointed day means certain days therein referred to, but none of these appear to apply to my client's undertaking. No notification has been received by my client as to taking over his undertaking, but it is believed that all such undertakings will in due course be taken over by the Board.

(1) Should my client apply for necessary consent under s. 16, and if so, what is the latest day for his notice?

(2) Should he make any claim for compensation before notification is received from the Board?

(3) Have any rules or orders been made relating to independent undertakings other than those specified?

The Act does not really appear to deal with small independent undertakings. Has any annotated copy of the Act with index been published?

*A.* (1) An application for consent should be made, under s. 16, and it will be advisable to lodge the application forthwith.

(2) No claim for compensation should be made, however, prior to the receipt of notification from the Board.

(3) No rules or orders have been made relating to independent undertakings. No annotated copy of the Act appears to have been published.

# In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Throughout his career, Sir William Thomson enjoyed his fair share of good fortune. In 1714 he obtained the Recordership of London through the casting vote of the Lord Mayor, and so dear was this office to him that when he became Solicitor-General in 1717, he continued to retain it. Those were the days of the early joint stock companies and there was a boom in charters of incorporation. Thomson, it seems, developed a grievance that the Attorney-General was appropriating more than his proper share of the resulting fees. He thereupon accused him of taking bribes and holding public auctions of charters in his chambers. On investigation, the charges were, of course, held to be "false, scandalous and utterly groundless," and the Solicitor-General accordingly lost his place. Perhaps, however, there was something in what he said, for four years later, in 1724, we find him receiving an annuity of £1,200 a year and enjoying a patent of precedence next to the Law Officers. In 1726 he became cursitor baron of the Exchequer, and in 1729 he was raised to the judicial bench of the court. He died on the 27th October, 1739, still Recorder of London, performing his duties by deputy. He left his portrait to the Corporation and rings to all the aldermen.

SCRIPTURAL CITATION.

There has been a certain amount of Scriptural citation in the High Court of late. Leviticus was invoked to illuminate the darkness of a tithe dispute before Mr. Justice Swift, and, in the Court of Appeal, after the sun pursuing Lord Justice Greer had twice forced him to change his seat, Lord Justice Scrutton recalled Joshua's "injunction to make the sun stand still." Holy Writ finds its way into legal discussion more often than sardonic laymen would expect, and very effective it may be if handled with such readiness as Lord Halsbury once displayed at the Bar when his opponent in a slander action, representing the defendants who were members of a charitable association, claimed for them the benefit of the New Testament definition of true religion—"to visit the widows and the fatherless in their affliction and to keep oneself unspotted from the world." "My friend," said Giffard in reply, "has forgotten the text which follows: 'If any man amongst you seemeth to be religious and bridleth not his tongue, that man's religion is vain.'" Fortunately for the effect of the retort, the defendant's counsel did not point out a small inaccuracy of Giffard's—his text preceded and did not follow the other!

JUSTICES IN JUDGMENT.

One of the daily papers has recently published a number of letters questioning the competence of lay magistrates, especially in connection with motoring cases, on grounds of old age, infirmity and general lack of training, the last, perhaps, being the most serious. Justices' justice inevitably has the disadvantages and the advantages of the predominance of the personal factor—the common juryman, who, as Lord Bramwell said, lurks in every judge, being here let loose without the restraining disquise of the ermine. Such criticisms are probably as old as the institution of the "Great Unpaid." The general attitude of the legal profession towards its auxiliaries was once well expressed by a judge giving judgment on an appeal from justices of the peace: "Though I cannot add with the good Prior (speaking of women)—

'Let all their ways be unconfined,'

yet I will say with him—

'Be to their faults a little blind
And to their virtues very kind.'"

At any rate, we should be thankful that the modern specimen does not answer to some old definitions: "His occupation is to keep the peace, but he makes it keep him, and lives upon scraps of it . . . The constable is his factor, the jailor the keeper of his warehouse, and the rogues and thieves his goods."

# Notes of Cases.

## Court of Appeal.

### *In re* F. A. Coulson.

Lord Hanworth, M.R., Lawrence and Romer, L.JJ.
6th October, 1933.

BANKRUPTCY—DISCHARGE IN 1924—CONTINGENT INTEREST UNDER WILL BECOMING DUE TO BANKRUPT IN 1928—SUBSEQUENT BANKRUPTCY IN 1931—ENQUIRY AS TO AMOUNT RECEIVED OR RECEIVABLE—APPLICATION TO EXAMINE TRUSTEES OF WILL—DISCRETION OF REGISTRAR—JURISDICTION—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), s. 25, s. 26 (9)—BANKRUPTCY ACT, 1926 (16 & 17 Geo. 5, c. 7), s. 3.

Appeal *ex parte* from a decision of Mr. Registrar Mellor in bankruptcy.

A bankrupt duly disclosed the fact that he had a contingent interest under a will, but, owing to the contingency, the interest was thought to be unsaleable and no attempt was made to realise it, discharge being granted to the bankrupt in 1924. In 1928 the interest passed to the bankrupt. He again became bankrupt in 1931, and the trustee applied to the court to direct an examination of the trustees of the will, under s. 25 of the Bankruptcy Act, 1914, to determine what property had passed to, or was owing to, the bankrupt. Mr. Registrar Mellor thought that there was no jurisdiction to make the order, as the bankrupt, when he became entitled, had obtained his discharge from the first bankruptcy. The trustee appealed. The court allowed the appeal.

Lord HANWORTH, M.R., said that by s. 3 of the Bankruptcy Act, 1926, in the event of a second bankruptcy "any property acquired by him" (the bankrupt) "since he was last adjudged bankrupt which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy shall . . . vest in the trustee of the subsequent bankruptcy." It was clear that the section depended on the fact whether there had or had not been a distribution in the earlier bankruptcy, and what had fallen to the bankrupt in the present case was unknown. But the powers as to examination given by s. 25 of the Bankruptcy Act, 1914, were not limited to any time, or to the duration of the bankruptcy, and in s. 26, sub-s. (9), it was laid down that "a discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee . . ." That indicated clearly the distinction drawn between the discharge of the bankrupt and the duty which still remained in the trustee concerning the realisation and distribution of his property. The powers given by s. 25, therefore, survived the discharge of the bankrupt, and the matter must be remitted to the registrar, in order that he might exercise his discretion as to ordering the desired examination.

Lords Justices LAWRENCE and ROMER agreed.

COUNSEL: *W. N. Stable*, for the appellant; the bankrupt was not represented.

SOLICITORS: *Tarry, Sherlock & King.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

### *Re* Russ and Brown's Contract.

Lord Hanworth, M.R., Lawrence and Romer, L.JJ.
6th October, 1933.

VENDOR AND PURCHASER—SALE BY AUCTION—MISDESCRIPTION—PROPERTY HELD BY UNDERLEASE SOLD AS LEASEHOLD—NATIONAL CONDITIONS OF SALE—CONDITION THAT WHERE UNDERLEASE "NO OBJECTION OR REQUISITION SHALL BE MADE ON THAT ACCOUNT"

Appeal from a decision of Clauson, J.

At public auction a purchaser bought eight leasehold houses, described in the particulars of sale as being held, as to some, for a

term of ninety years from 24th June, 1849, at a total ground rent of £42 a year, and as to the remainder, for a term of ninety-nine years (less seven days) from 26th March, 1846, at a total ground rent of £30 a year. The property was sold subject to special conditions and to the National Conditions of Sale. By special condition 9 the title to lot 1 was to begin with the leases under which the respective properties were held. The National Conditions of Sale provided by para. 6 (1) that "the abstract of title to leasehold property shall (unless otherwise provided) commence with the lease or underlease creating the term sold." By para. 6 (3): "Where the property sold is held by underlease no objection or requisition shall be made on that account, or on account of the covenants by the tenant in the underlease not corresponding with the covenants by the lessee in the superior lease or of any superior lease comprising other property than that sold." On investigation of the title the purchaser discovered that the property, instead of being held as he supposed on head leases, was held on two underleases derived out of head leases. He objected, and the vendors took out a summons for a declaration that good title had been shown. Clauson, J., upheld the objection and refused to make the declaration. The vendors appealed. The court dismissed the appeal.

Lord HANWORTH, M.R., said that the terms of the contract and the law on the subject were too plain. The law had been stated in *In re Beyfus and Master's Contract*, 39 Ch. D. 110, and it was clear that when leasehold property had been sold the contract was not satisfied by the tender of an underlease. It was true that reference had been made to paragraph 6 (3) of the National Conditions of Sale, but he could see no reason to come to the conclusion that in the present contract lease included underlease.

LAWRENCE and ROMER, L.JJ., agreed.

COUNSEL: *G. P. Slade*; *C. R. D. Richmount*.

SOLICITORS: *C. A. Russ & Son*; *Hardcastle Sanders*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

### *In re* Joicey: Joicey *v.* Elliot.

Lord Hanworth, M.R., Lawrence and Romer, L.JJ.,

10th October, 1933.

WILL—APPOINTMENT—CONSTRUCTION—FUND APPOINTED TO CHILD DYING WITHIN PERIOD "LEAVING ISSUE HIM SURVIVING"—DEATH OF CHILD LEAVING SON *en ventre sa mère*—CHILD'S ESTATE ENTITLED TO FUND—INDIRECT BENEFIT TO AFTER-BORN GRANDCHILD.

Appeal from a decision of Clauson, J.

R.E. by will appointed a fund to be held in trust for all or any her children or child who should survive her and attain twenty-one, and directed that the share of any child or children should be retained upon trust during twenty-one years from the death of the appointor, the income to be paid to the child during life; further, that if any child should die within the period, his share should be held in trust for the person to whom he should by will appoint. In default of appointment the share was to be held (*a*) in the event of such child "leaving issue him or her surviving" in trust for the child absolutely, but in the event of the child "not leaving issue him or her surviving" the share was to accrue to the other children of the appointor. R.E. died in 1912, leaving five children. Her son T, a domiciled Scotsman, died on 11th May, 1932, intestate, without exercising the power of appointment as to his share. He had then no born children, but his wife gave birth to a posthumous son on 12th June, 1932. A summons was taken out to determine whether T's share passed to his representative, or whether it accrued to the share of the other children of R.E.

CLAUSON, J., thought that there was no authority for the proposition the expressions like children "living" or "surviving" could not be extended to a child *en ventre sa mère* unless the child took a benefit under the clause, but, even if it were so, there was no reason to confine the case to a direct benefit to the child; it might also include a case where a benefit was given to a parent and so not unlikely to enure to the child's advantage.

Other children of R.E. appealed. The Court dismissed the appeal.

Lord HANWORTH, M.R., said that by the general rule a child *en ventre sa mère* could be treated as living for the purpose of taking a benefit under a will, and that was the finding by Chitty, J., in *In re Burrows: Cleghorn* v. *Burrows* [1895] 2 Ch. 497, as applicable to the words "issue living." In the present case it was said that the rule did not apply because the fund would go to the father's estate, he had made no will, and it could not be said that the child actually benefited. But *Villar* v. *Gilbey* [1907] A.C. 139, indicated that the question of benefit ought not to receive a too narrow construction, and Clauson, J., was right in holding that an accretion to the father's estate might reasonably be considered as of probable benefit to the child.

LAWRENCE and ROMER, L.JJ., delivered judgment to like effect.

COUNSEL: *Sir Gerald Hurst*, K.C., *Wilfrid Hunt* and *Cremlyn*, for the appellants; *Vaisey*, K.C., and *N. C. Armitage*, for the representative of T.; *Howard Wright*, for the trustees of the will of R.E.

SOLICITORS: *Stibbard, Gibson & Co.*; *Coulson & Coulson*; *Martineau & Reid*, for the appellants and trustees; *Walker, Martineau & Co.*, for the respondent representative of T.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

## TABLE OF CASES previously reported in current volume—Part II.



# Societies.

## The Solicitors' Managing Clerks' Association.

LAW CLASSES, TWELFTH SESSION, 1933–1934.

The Association has again arranged a series of classes for the forthcoming winter. As before, by the kind permission of the authorities, the classes will be held at the Royal Courts of Justice.

The Council of the Association being satisfied from practical experience that students find one evening per week to be as much as they can satisfactorily undertake, have again arranged two courses only for the winter season, and they trust that this will be the means of increasing the number of students that will be able to attend.

The first course, "The Conduct of an Action in the King's Bench Division from Writ to Judgment," the lecturer being Mr. A. W. Booth, will be held on Mondays at 6.45 p.m.,

commencing 9th October, 1933, and ending 18th December, 1933.

The second course will be held on Mondays at 6.45 p.m., commencing 15th January, 1934, and ending 26th March, 1934, when Mr. J. A. Blackburn will lecture on "Sales and Purchases of Land."

Applications for tickets should be addressed to the secretary at the office of the Association, and should give the name, address and age of the applicant and the name of his or her employer. The application should also state which course the applicant desires to attend, and should be accompanied by the fee for attendance. Accommodation is strictly limited and applications will be dealt with in order of priority of receipt.

The fee for one course is 3s. and for both series 5s.

A ticket of membership will be sent on receipt of the prescribed fee and must be produced when demanded.

At the end of the session examinations will be held on the subjects dealt with at each of the classes, and prizes will be awarded. In addition to these prizes, a certificate in the form of a letter from the Association will be awarded to all students attaining a minimum of 60 per cent. marks at the examination of either class. Any student attending the classes may sit for the examination, but managing clerks and articled clerks will not be eligible for a prize.

## Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held at 60, Carey-street, London, on the 11th October. Mr. E. R. Cook, C.B.E., in the chair. The other Directors present being Sir A. Norman Hill, Bart., Sir Reginald W. Poole, Sir E. F. Knapp-Fisher, and Messrs. E. E. Bird, A. C. Borlase (Brighton), A. J. Cash (Derby), W. A. Coleman (Leamington), T. G. Cowan, N. T. Crombie (York), T. S. Curtis, E. F. Dent, O. J. Humbert, E. B. Knight, C. G. May, R. C. Nesbitt and H. F. Plant. £1,466 was distributed in grants of relief; eighty new members were admitted; and other general business transacted.

## The Hardwicke Society.

An ordinary meeting of the Society was held in the Middle Temple Common Room on Friday, 13th October. The President, Mr. L. Ungoed-Thomas, took the chair at 8 p.m. In public business Prince Leonid Lieven moved: "That this House deplores the present policy towards natives in Africa." Mr. E. J. P. Cussen opposed. There spoke to the motion Mr. B. K. Bancrji, Mr. A. C. Douglas, Mr. D. A. Stride (Hon. Treasurer), Mr. Granville Sharp (ex-President), Mr. Campbell Prosser, Mr. Baden-Fuller, Mr. Menzies, Mr. Sturge, Mr. Stephens and the Hon. Proposer in reply. On a division the motion was lost by fifteen votes.

## The Gray's Inn Debating Society.

The next meeting of the Society will be held in the Common Room, Gray's Inn, at 8.15 p.m., on Thursday, 2nd November. Particulars will be announced in due course.

## United Law Society.

A meeting of the United Law Society was held on 16th October, 1933, in the Middle Temple Common Room. Mr. R. W. Bell proposed: "That in the opinion of this House the influence of Hitler on Europe is deplorable." Mr. H. Everett opposed. Messrs. Oppenheim, Burke, Jameson, Hull, O'Brien and Owens spoke on the motion and Mr. Bell replied. The motion was lost.

## Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 17th October, 1933 (Chairman, Mr. R. S. W. Pollard), the subject for debate was "That this House would welcome cannibalism as a solution of the unemployment problem." Mr. J. F. Chadwick opened in the affirmative; Mr. M. C. Batten opened in the negative. The following members also spoke: Messrs. E. Maitland Woolf, R. J. Temple, J. F. Ginnett, J. G. Clarfelt, H. J. Baxter, Miss U. A. Hastie, Messrs. J. C. Christian Edwards, A. L. Ungoed Thomas, N. A. M. Sitters, Miss B. H. Alexander, Messrs. J. Mazure, L. F. Sturge, P. H. North Lewis, C. J. de L. Root, H. E. Piffe Phelps, K. M. Trinholme, R. Langley Mitchell. The opener having replied, the motion was lost by six votes.

## Central Criminal Court Bar Mess.

The annual dinner of the Central Criminal Court Bar Mess was held at the Café Royal, on Friday, 13th October. Mr. Vernon Gattie, C.B.E., in the chair. There were present:—The Lord Mayor, the Lord Chief Justice of England, Mr. Justice Hawke, Mr. Justice Humphreys, Lord Trenchard G.C.B., D.S.O., Lord Jessel, C.B., C.M.G. the Recorder of London (Sir Ernest Wild, K.C.), the Common Serjeant (Mr. Holman Gregory, K.C.), Sir Henry F. Dickens, K.C., Judge Cecil Whiteley, K.C., Alderman Sir Charles Collett (the Lord Mayor Elect), Sir Ernley Blackwell, K.C.B., Sir E. Tindal Atkinson, K.C.B., C.B.E., Sir Percival Clarke (Chairman, London Sessions), Sir Claud Schuster, K.C.B., C.V.O., K.C., Mr. Alexander Maxwell, C.B. (Deputy Permanent Under-Secretary of State), Mr. Oscar Dowson, C.B.E. (Legal Adviser, Home Office), Mr. Wilfrid W. Nops (the Clerk, Central Criminal Court), Sir Angus Scott, D.L., Sir John Gilbert, K.B.E., Mr. H. R. Scott, C.B. (Chairman, Prison Commission), Mr. Anthony Pickford (the City Solicitor), Lieut.-Colonel Sir Hugh Turnbull (the Commissioner, City Police), Sir Rollo Graham-Campbell, Alderman and Sheriff Sir George Broadbridge, Mr. Sheriff S. G. Joseph, Mr. Deputy and Under-Sheriff C. F. Jennings, Mr. S. W. Price, Major Godfrey Martin, D.S.O. (Chief Commoner), Sir George Wilkinson, Mr. Under-Sheriff Sidney Newton, Mr. F. Whittingham, Captain F. H. L. Stevenson (Governor, Brixton Prison), Mr. T. Paterson Owens (Governor, Wandsworth Prison), Lieut.-Colonel L. W. Johnson (Governor, Wormwood Scrubs Prison), Commander Tabuteau, O.B.E., R.N. (Governor, Pentonville Prison), Dr. Grierson (Senior Medical Officer, Brixton Prison), Mr. Eustace Fulton (Chairman, C.C.C. Bar Mess), Mr. Wallace Thoday (Mansion House Justice Room), Sir Henry Curtis-Bennett, K.C., Mr. J. Bowen Davies, K.C., Dr. Pallicia, O.B.E. (Italian Legal Adviser), Maitre F. Allemes (French Legal Adviser), Dr. Vilém Cerny (Czecho-Slovak Legation), Mr. N. Ashton, Mr. C. J. Balaam, Mr. J. S. Bass, Mr. R. H. Blundell, Mr. C. L. Burgess, Mr. L. A. Burne, Mr. G. B. Canny, Mr. R. S. Chapman, Mr. W. D. Coleridge, Mr. H. F. Cornes, Mr. E. H. Coumbe, Mr. Ivan Cruchley, Mrs. Olive Cruchley, Mr. Derek Curtis-Bennett, Mr. Gerald Dodson, Mr. Henry Elam, Mr. Archibald Forman, Mr. W. Guy Fossick, Mr. Walter Frampton, Mr. W. B. Frampton, Mr. Julian Fuller, Mr. Marston Garsia, Mr. A. W. Goodman, Mr. Albam Gordon, Mr. Wallis Grain, Mr. Graham Grant, Mr. A. Gray, F.R.C.S., Miss Bernal Greenwood, Mr. Mervyn Griffith-Jones, Mr. I. E. M. Gunning, Mr. C. D. Harris, Mr. Anthony Hawke, Mr. John Horey, Mr. Christmas Humphreys, Mr. St. John Hutchinson, Mr. Harry Infield, Mr. S. James, Mr. Anthony Jessel, Mr. G. P. Jordon, Mr. Granville Kenyon, Mr. H. V. Kenyon, Mr. A. Highmore King, Mr. G. F. Kingham, Mr. Lewis Langdon, Mr. Desmond Leggatt, Mr. A. R. Linsley, Mr. G. B. McClure, Mr. St. J. McDonald, Mr. O. S. MacLeay, Mr. John Maude, Mr. Morgan May, Mr. J. B. Montagu, Mr. Beaufoi Moore, Mr. C. R. Morden, Mr. T. E. Morris, Miss Nadia Neville, Mr. D. J. S. Nicholson, Mr. Ivor Nicholson, C.B.E., Mrs. Helena Normanton, Miss Winifred Ococks, Mr. Ronald Powell, Miss Grace Prescott, Mr. W. B. Purchase, Miss Rita Reuben, Mr. D. Rhodes, Mr. G. D. Roberts, Mr. R. M. H. Rodwell, Mr. Gerald Ryan, Mr. C. Samman, Mr. Montague Shearman, Miss Venetia Stephenson, Mr. Alan L. Stevenson, Mr. J. Wells Thatcher, Mr. J. Avory Tickell, Mr. Maxwell Turner, Mr. Laurence Vine, Miss Irene Wall, Mr. Bernard Watson, and Mr. Albert Crew (Secretary).

# Legal Notes and News.

## Honours and Appointments.

The King has been pleased to approve that Mr. HERBERT FRANCIS DUNKLEY, Indian Civil Service, shall be appointed a Puisne Judge of the High Court of Judicature at Rangoon in the vacancy which will occur on 13th November owing to the retirement of Sir Benjamin Heald.

Mr. JOHN MILNER GRAY (Magistrate, Uganda Protectorate) has been appointed Judge of the Supreme Court of the Gambia Colony.

## Professional Announcements.

(2s. per line.)

### ESTATE AGENCY PROCEDURE.

Certain proposed rules for the regulation of real estate practice were considered last Monday at the Chartered Surveyors' Institution, and approved by a large majority. They have been already agreed to provisionally by the organisations connected with auctioneering.

### INSTALLATION OF NEW SCOTTISH JUDGE.

Mr. Craigie Mason Aitchison, K.C., who was formerly Lord Advocate, was installed in the Court of Session, Edinburgh last Tuesday, as Lord Justice Clerk, with the title of Lord Aitchison. At the same ceremony, Mr. W. G. Normand, K.C., the new Lord Advocate, and Mr. Douglas Jamieson, the new Solicitor General for Scotland, presented their commissions to Lord Clyde, the Lord President.

### THE OFFICERS' ASSOCIATION.

(Registered under the War Charities Act, 1916.)

The general policy of the Association is to promote the well-being of all who have held His Majesty's Commission, and of their wives, widows and dependants: to relieve distress from causes arising out of the war so far as funds permit, and, wherever possible, to make the recipient of relief self-supporting. Applications for assistance are also dealt with from disabled ex-nurses of the pensionable services. The Association has free legal and financial advice and claims and pensions bureaux, a clothing store at 8, Eaton-square, London, S.W.1, and an employment bureau for ex-officers at 20, Grosvenor-gardens, S.W.1. The Association endeavours generally to co-ordinate the activites of the various societies which are in existence for the benefit of ex-officers and their families.

Cash donations and gifts of clothing will be gratefully received by the General Secretary at 8, Eaton-square, S.W.1.

Mr. Evan Richard Davies, solicitor, of Market Drayton, left "so far as at present can be ascertained," £25,139, with net personalty £19,343.

The London Passenger Transport Arbitration Tribunal have entered into occupation of their offices at Columbia House, Aldwych, W.C.2 They have appointed Mr. Paul C. Davie, barrister-at-law, to be their secretary, and communications intended for the Tribunal should be addressed to him at that address.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. 1. | MR. JUSTICE EVE. Witness. Part II. | GROUP I. MR. JUSTICE MAUGHAM. Witness. Part I. |
|---|---|---|---|---|
| | Mr. | Mr. | Mr. | Mr. |
| Oct. 23 | Blaker | Andrews | *Blaker | *Jones |
| ,, 24 | More | Jones | Jones | *Hicks Beach |
| ,, 25 | Hicks Beach | Ritchie | *Hicks Beach | *Blaker |
| ,, 26 | Andrews | Blaker | Blaker | *Jones |
| ,, 27 | Jones | More | *Jones | Hicks Beach |
| ,, 28 | Ritchie | Hicks Beach | Hicks Beach | Blaker |

| DATE. | GROUP I. MR. JUSTICE BENNETT. Non-Witness. | MR. JUSTICE CLAUSON. Witness. Part I. | GROUP II. MR. JUSTICE LUXMOORE. Non-Witness. | MR. JUSTICE FARWELL. Witness. Part II. |
|---|---|---|---|---|
| | Mr. | Mr. | Mr. | Mr. |
| Oct. 23 | Hicks Beach | *More | Ritchie | Andrews |
| ,, 24 | Blaker | *Ritchie | Andrews | *More |
| ,, 25 | Jones | *Andrews | More | Ritchie |
| ,, 26 | Hicks Beach | More | Ritchie | *Andrews |
| ,, 27 | Blaker | *Ritchie | Andrews | More |
| ,, 28 | Jones | Andrews | More | Ritchie |

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.



## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 26th October, 1933.

| | Div. Months. | Middle Price 18 Oct. 1933. | Flat Interest Yield. £ s. d. | †Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | | | |
| Consols 4% 1957 or after .. .. | FA | 109½ | 3 13 1 | 3 7 11 |
| Consols 2½% .. .. .. .. | JAJO | 73½ | 3 8 0 | — |
| War Loan 3½% 1952 or after .. | JD | 101⅛ | 3 9 3 | 3 8 5 |
| Funding 4% Loan 1960-90 .. .. | MN | 110½ | 3 12 7 | 3 8 3 |
| Victory 4% Loan Av. life 29 years | MS | 109½ | 3 13 1 | 3 9 6 |
| Conversion 5% Loan 1944-64 .. | MN | 117 | 4 5 6 | 3 3 0 |
| Conversion 4½% Loan 1940-44 .. | JJ | 111½ | 4 0 9 | 2 10 11 |
| Conversion 3½% Loan 1961 or after .. | AO | 99¾ | 3 10 2 | — |
| Conversion 3% Loan 1948-53 .. | MS | 98¼ | 3 1 1 | 3 2 6 |
| Conversion 2½% Loan 1944-49 .. | AO | 93¾ | 2 13 4 | 3 0 5 |
| Local Loans 3% Stock 1912 or after .. | JAJO | 86½ | 3 9 6 | — |
| Bank Stock .. .. .. .. | AO | 349½ | 3 8 8 | — |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after .. .. .. | JJ | 78 | 3 10 6 | — |
| India 4½% 1950-55 .. .. .. | MN | 108½xd | 4 2 11 | 3 16 2 |
| India 3½% 1931 or after .. .. | JAJO | 86½ | 4 0 11 | — |
| India 3% 1948 or after .. .. | JAJO | 74¼ | 4 0 9 | — |
| Sudan 4½% 1939-73 .. .. .. | FA | 111 | 4 1 1 | 2 6 5 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 108xd | 3 14 1 | 3 7 6 |
| Transvaal Government 3% Guaranteed 1923-53 Average life 12 years | MN | 100xd | 3 0 0 | 3 0 0 |
| **COLONIAL SECURITIES** | | | | |
| *Australia (Commonw'th) 5% 1945-75 | JJ | 111 | 4 10 1 | 3 16 9 |
| *Canada 3½% 1930-50 .. .. | JJ | 101 | 3 9 4 | — |
| *Cape of Good Hope 3½% 1929-49 .. | JJ | 101 | 3 9 4 | — |
| Natal 3% 1929-49 .. .. .. | JJ | 95 | 3 3 2 | 3 8 7 |
| New South Wales 3½% 1930-50 .. | JJ | 99 | 3 10 8 | 3 11 7 |
| *New South Wales 5% 1945-65 .. | JD | 110 | 4 10 11 | 3 18 9 |
| *New Zealand 4½% 1948-58 .. .. | MS | 107 | 4 4 1 | 3 16 10 |
| *New Zealand 5% 1946 .. .. | JJ | 110 | 4 10 11 | 3 18 9 |
| *Queensland 4% 1940-50 .. .. | AO | 102 | 3 18 5 | 3 13 5 |
| *South Africa 5% 1945-75 .. .. | JJ | 113 | 4 8 6 | 3 12 9 |
| *South Australia 5% 1945-75 .. | JJ | 110 | 4 10 11 | 3 18 9 |
| *Tasmania 3½% 1920-40 .. .. | JJ | 101 | 3 9 4 | — |
| Victoria 3½% 1929-49 .. .. | AO | 98 | 3 11 5 | 3 13 4 |
| *W. Australia 4% 1942-62 .. .. | JJ | 102 | 3 18 5 | 3 14 2 |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after .. | JJ | 86 | 3 9 9 | — |
| *Birmingham 4½% 1948-68 .. .. | AO | 112 | 4 0 4 | 3 9 3 |
| *Cardiff 5% 1945-65 .. .. .. | MS | 111 | 4 10 1 | 3 16 9 |
| Croydon 3% 1940-60 .. .. .. | AO | 94 | 3 3 10 | 3 7 1 |
| *Hastings 5% 1947-67 .. .. | AO | 113 | 4 8 6 | 3 14 4 |
| Hull 3½% 1925-55 .. .. .. | FA | 99 | 3 10 8 | 3 11 4 |
| Liverpool 3½% Redeemable by agreement with holders or by purchase .. | JAJO | 99 | 3 10 8 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 72½ | 3 9 0 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 86½ | 3 9 4 | — |
| Manchester 3% 1941 or after .. | FA | 85 | 3 10 7 | — |
| Metropolitan Consd. 2½% 1920-49 .. | MJSD | 93 | 2 13 9 | 3 1 3 |
| Metropolitan Water Board 3% "A" 1963-2003 .. .. .. .. | AO | 87 | 3 9 0 | 3 10 1 |
| Do. do. 3% "B" 1934-2003 .. | MS | 88½ | 3 7 10 | 3 8 9 |
| Do. do. 3% "E" 1953-73 .. | JJ | 95 | 3 3 2 | 3 4 6 |
| *Middlesex C.C. 3½% 1927-47 .. | FA | 101 | 3 9 4 | — |
| Do. do. 4½% 1950-70 .. .. | MN | 112xd | 4 0 4 | 3 11 0 |
| Nottingham 3% Irredeemable .. | MN | 85xd | 3 10 7 | — |
| *Stockton 5% 1946-66 .. .. | JJ | 112 | 4 9 3 | 3 16 2 |
| **ENGLISH RAILWAY PRIOR CHARGES** | | | | |
| Gt. Western Rly. 4% Debenture .. | JJ | 103 | 3 17 8 | — |
| Gt. Western Rly. 5% Rent Charge .. | FA | 119½ | 4 3 8 | — |
| Gt. Western Rly. 5% Preference .. | MA | 105½ | 4 14 9 | — |
| ‡L. & N.E. Rly. 4% Debenture .. | JJ | 98 | 4 1 8 | — |
| ‡L. & N.E. Rly. 4% 1st Guaranteed | FA | 89½ | 4 9 5 | — |
| ‡L. Mid. & Scot. Rly. 4% Debenture | JJ | 101 | 3 19 2 | — |
| ‡L. Mid. & Scot. Rly. 4% Guaranteed | MA | 94 | 4 5 1 | — |
| Southern Rly. 4% Debenture .. | JJ | 104 | 3 16 11 | — |
| Southern Rly. 5% Guaranteed .. | MA | 115½ | 4 6 7 | — |
| Southern Rly. 5% Preference .. | MA | 105½ | 4 14 9 | — |

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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